FOR MYSORE STATE

Parole

(1954) Department

MS SERIES.

G.O. No. 3346

Dated 13.11.54.

[Despatch Abstract,]

Prisoners Release on medical Grounds.

Rule 514-A of the M. P. H. Manual Vol II

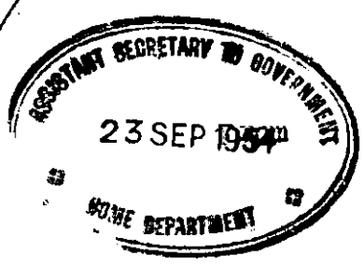
= T. Cannanore Convict No. 4804 Mahmood

Sheth. Sanctioned

To

The Secretary, Home Department,

Government of Madras - Madras.



P. Dharmaraja Bunnu,
Teacher,
Board Higher Elementary School,
Karnavi post, S.K. (Karkal Taluk).

Sir,

125393/23/7 Sub : Release of Convict No.9804 padmaraja shetty,

Ref : Memo. No. R.1957/53 dated 30.4.53 of the Superintendent Central Jail, Cannanore.

My father padmaraja shetty has been ailing for a long time since his admission to Central Jail Cannanore and was treated at General Hospital, Madras. There was no improvement and I received the above memo. in which I was asked whether I am willing to take care of the prisoner if he were released on medical grounds.

I have represented my willingness to take care of him by return of post. I have been waiting eagerly for the past one year. There was no response and I understand that he is seriously ill at present.

I humbly request you, sir, to take necessary steps to see that the prisoner is released on Medical grounds.

Yours faithfully,

P. Dharmarajunnu
21/9/54

Copy to : Inspector General of Prisons, Madras.

Very urgent.

Home 24th

C. no. 125393 dis iv/54

Memo no. 125393 dis iv/54-1 dt 25.9.54

Prisoners- ~~Remission of Sentence~~ C. J. Cannanore-

Release on medical grounds. Convict no. 9804, Padmaraja Shetty.

Ref: Petition from Sri P. Dharmaraja- Bunnu. dt. 21.9.53.

A copy of the petition cited is forwarded to the I. G. of Prisons, Madras, for very urgent remarks. He is requested to obtain and forward to Govt a copy of the nominal roll, a copy of the Adv. Board working sheet and copies of judgments of the lower and the appellate courts relating to the prisoner referred to above. A detailed medical report regarding the present state of health of the prisoner should also be sent.

24/9/54

24.9.54

24/9/54

To The I. G. of Prisons, Madras (with a copy of cf)

No 3 weeks.

C.F. 32 (—170,10,568 —20-1-54.

Jail Department

From (Name) Sri T.S. Ramachandran, I.C.S.

Designation Inspector General of Prisons,

Station Madras.1.

To

The Secretary to Government,
Home Department,
Madras.

ASSISTANT SECRETARY TO GOVERNMENT
10 OCT 954
HOME DEPARTMENT

Enclosures: 10

No. 4114/S4/54 dated 8-10-54. 135

Sir,

Sub: Prisoners - Release on medical grounds - Central Jail, Cannanore - Convict No.9804, Padmaraja Shetty - Records - Submitted.

Ref: Home Memorandum No.125393 Courts IV/54-1, dated 25-9-54.

*****

132243/II

With reference to the above Government Memorandum the following records relating to the above prisoner are submitted for favour of disposal.

1. Nominal roll.
2. Advisory Board Working Sheet.
3. Medical Case Sheet on the present state of health.
4. Judgment in R.T.122/48 on the file of the High Court, Madras.
5. Copy of the letter from the Civil Assistant Surgeon, Penitentiary, Madras where the prisoner underwent treatment.

2. Copy of the judgment in S.C.No.30/48 on the file of the Sessions Judge, South Kanara, will be submitted on receipt.

INSPR. GENL. OF PRISONS.

Enclosures:

TMS/9-10-54.

FORM No: 52. (*See* Rule 879, Part I of Vol. II, M.P. and R.M.) Judl. (Jail II)-13.

7

NOMINAL ROLL OF MALE* CONVICT No. 9804† A

Name Padmaraja Shetty Naphew of Naniraja Shetty.

Residence (Village, Taluk and District.) Gavaladi, Puttur, S. Kanara

Caste Hindu. Present age 53 years. Occupation Landlord.

Section and Code under which imprisoned. 302 r.w. 34 I.P.C and 201 I.P.C

Original sentence of order and date. Death and 3 years R.I. on 11.11.48.

Adjudicating Court and Calendar number of case. Sessions Judge S. Kanara S.C. 30/48

Unexpired term of sentence after deducting remission earned. 9 year(s) 8 Month(s) 21 Day(s).

Present state of health and fitness to undertake journey.‡ Medical report enclosed

Result of appeal (if any) Reduced to transportation for life in M.T. 122/48 and CA. 667/48 D/21.2.49 by High Court, Kandy.

Conduct in Jail Good.

Personal and descriptive marks§ Mole 3½" from left nipple at 10 o'clock. (2) Mole left temple.

Remarks Cells - C, Diet - Rice, Exam - A

Remission earned - 1598 days

* Strike out and add "Female" when necessary.

† After the prisoner's number, add his class A or B, according as he is classed as a Casual (and whether Star) or Habitual, respectively, and after the letter, add the number of previous convictions, thus—No. 3742 B-2.

‡ When a journey is about to be undertaken by a prisoner, the roll is to be signed by the Medical Officer.

§ Personal and descriptive marks are to be given when (1) rolls accompany prisoners transferred, (2) police assistance is sought for the recapture of an escaped prisoner (Rule 549, Part I of Vol. II, M.P. and R.M.)

Jail, 1. 10. 1952

10. 11. 68
1. 10. 54
9. 1. 14
8. 4. 4
21. 8. 9

Superintendent.

Advisory Board Working Sheet of convict No.9804 Padmaraja Shetty.

Sentence.	20 years.	
Date of sentence	11 - 11 - 48	
Add 2/3 sentence.	4 - 13	
	10 - 3 - 62	

Remission earned excluding special remission as per G.O. Ms.149 Home dated 20-1-54 -383 days and likely to earn @ 4 days per month, and G.C.R. and conversion of gratuity 383 days. Total 766 days or 6 - 1 - 2

Date of eligibility for Advisory Board. 4 - 2 - 60

Superintendent.
Central Jail, Cannanore

Date of release of convict No.9804 Padmaraja Shetty in the normal course.

Date of sentence	11 - 11 - 48	
Sentence... ..	20 years	
	10 - 11 - 68	

Remission earned 1598 days and likely to earn @ 4 days per month, G.C.R. and conversion of gratuity 578 days. Total 2176 days or 21 - 11 - 5

Date of release. 19 - 11 - 62

Superintendent,
Central Jail, Cannanore.

Medical Case Sheet of Convict 9804, Padmaraja Shetty

- - - -

Age : 48.

Admitted to Central Jail, Cannanore on 12 -11- 1948.

Central Jail, Hospital Cannanore on 9-9-1964.

Duration : 21 days.

History of present illness : Present complaint started with acute pain in the stomach, vomiting slight rise of temperature and breathlessness on walking. Twice he vomited blood and had severe pain all over the abdomen and symptoms of collapse. Routine measures have relieved him.

History of previous illness: Prisoner was admitted to the hospital on four previous occassions with following diagnosis and results.

	Date.	Diseases.	Results.
1.	10-12-51 to 9-2-52	Ch. Malaria.	Cured.
2.	11-2-52 to 6-2-53	Dyspepsia	Relieved.
3.	6-1-53 to 25-8-53	Acute Dyspepsia.	Transferred to General Hospital, Madras and underwent a stomach operation
4.	20-1-54 to 3-3-54	Jejunal Ulcer.	Relieved.

Family History: Father and Brother died of the same complaint. Has got five children. All healthy.

Present condition: Patient is having signs and symptoms of myocardial failure, (weakness of heart muscle). Dyspepsia, acute constipation loss of appetite and inability to ~~tolerate~~ retain anything else except a ½ pt. milk and one or two loaves of bread.

Local examination:

C.V.S. On inspection apex beat seen at the 6th intercostal space 1" away from midclavicular line. No evidence of any murmer or decompensation of the heart at present.
Right border on percussion is about 1" to the right of the right border of the sternum. Upper border is at 1st intercostal space. Left border is 1" to the left of the ~~left~~ mid clavicular line

Circulatory system: Pulse Rate. 108. Other details as noted above. (in column local examination)

Respiratory System: R.R. - 20

Other findings - Normal

Digestive system. Tongue coated. V.P. Present. Evidence of a small mass about ¾" diameter just 2" to the right of the midsternal line in the right hypochondrium.

Urinary System: Trace of Albumen present; Urine high coloured.

Treatment: Prisoner put on sippis diet, ~~mixture Ant acids~~, Larostidine injections, Alxkaline powders and ~~renimal~~ minimal dose of degitalis.

Diagnosis:- ~~Jejunal~~ jejunal ulcer with Myocarditis.

He is under observation in this hospital.

G. Gilli

Central Jail, Cannanore, Medical Officer.

Dated:- 1/10/54

Home Dept.

C.no. 125393 Ch IV/54.

Memo no. 125393 Ch IV/54. 24/15.10.54.

Prisoners - C.J. Cannanore. Release on medical grounds - Convict no. 9804, Padmaraja Shetty.

Ref: From the I.G. of Prisons, Madras, No. 4114/54/54 d. 8.10.54.

The copy of the letter from the Civil Asst. Surgeon, Penitentiary Madras, said to have been sent with the letter cited, has not been received by Govt.

The I.G. is requested to send the same urgently.

14/10/54

15.10.54

Sr no 5, 1954

CENTRAL DISPATCH BRANCH
Received by hand at
Transmitted
To I.G. of Prisons, Madras
Date 15/10/1954. Despatcher's Initials.

Mr. Re copy of judgment referred to in para 2 of the note awaited. [Rs. 2 more]

15.10.54

G.F. 82 (a)—28,76,506—20-1-54.

Jail Department

From (Name) Sri T.S. Ramachandran, I.C.S.,
Designation Inspr.Genl.of Prisons,
Station Madras.

Received ——— Registered ———

To

The Secretary to Government,
Home Department, Madras.
MADRAS.

Enclosures:

No. 4114/S4/54 dated 15-10-54 195

Sir,

Sub: Central Jail, Cannanore - Release on medical grounds - C.No.9804 Padmaraja Shetty

Ref: Home Dept.Memo.125393 Cts IV/54-1 dated 25-9-54
This office letter No.4114/S4/54 dated 8-10-54.

135119 Jail

In continuation of the above, I submit herewith a copy of the judgment in S.C.No.30/48 on the file of the Sessions Judge, South Kanara together with a copy of the Advisory Board working sheet relating to the above prisoner.

for INSPR.GENL.OF PRISONS.

Advisory Board Working sheet of convict No.9804
Padmaraja Shetty including special remission.

Sentence. ...	...	20 years.
Date of sentence..	...	11 - 11 - 48.
Add 2/3 sentence..	...	4 - 13.
		10 - 3 - 62
Remission earned including special remissions 1598 days and likely to earn @ 4 days per month, G.C.R. and conversion of gratuity 186 days. Total 1784 days or		24 - 10 - 4.
		16 - 4 - 57.

Superintendent,
Central Jail, Cannanore.

By a special messenger

C.F. 32( )—170,10,388—20-1-54. BY SPECIAL MESSENGER

Jail Department | Received Registered

From (Name) Sri T.S. Ramachandran, I.C.S.,
Designation Inspr.Genl.of Prisons,
Station Madras.

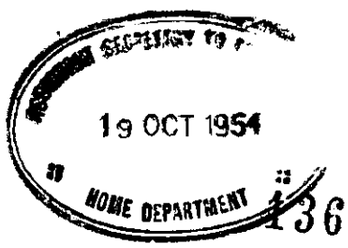
To
The Secretary to Government,
Home Department,
Madras.

Enclosures:

No. 4114/S4/54, dated 19-10-1954 195

Sir,

Sub: Release on medical grounds - C.No. 9804 Padmaraja Shetty - Medical Certificate submitted.



Ref: Home Department Memo.No.125393 Cts IV/54-1 dated 25-9-54.
This office letter No.4114/S4/54 dated 14-10-54.

In continuation of my letter cited above, I submit herewith the medical report relating to the above prisoner.

2. The certificate required under Rule 514-A(2) of the M.P. & R.M. Vol.II, will be submitted on receipt of report from the Superintendent, Central Jail, Cannanore.

for INSPR.GENL.OF PRISONS.

svl.1910

Copy to the Superintendent, Central Jail, Cannanore. He is requested to obtain and submit the report at an early date.

MEDICAL CASE SHEET OF CONVICT 9804, PADMARAJA SHETTY.

Age:- 48

Admitted to Central Jail, Cannanore on 12-11-1948.

Central Jail, Hospital Cannanore on 9-9-1954.

Duration:- 23 days.

History of present illness:- Present complaint started with acute pain in the stomach, vomiting, slight rise of temperature and breathlessness on walking. Twice he vomitted blood and had severe pain all over the abdomen and symptoms of collapse, Routine measures have relieved him.

History of previous illness: Prisoner was admitted to the hospital on four previous occasions with following diagnosis and results.

Date.	Disceases.	Results.
1. 10-12-51 to 9-2-52.	Ch.Malaria.	Cured.
2. 11- 2-52 to 6-2-53.	Dyspepsia.	Relieved.
3. 6-1- 53 to 25-8-53.	Acute Dyspepsia.	Transferred to General Hospital, Madras and underwent an operation.
4. 20-1- 54 to 3-3-54.	Jejunal Ulcer.	Relieved.

Family History: Father and Brother died of the same complaint. Has got five children. All healthy.

Present condition: Patient is having sighns and symptoms of myocardial failure, (weakness of heart muscle). Dyspepsia, acute constipation loss of appetite and inability to tolerate anything else except a ½ pt. milk and one or two loaves of bread.

LOCAL EXAMINATION:

C.V.S: On inspection apex beat seen at the 6th intercostal space 1" away from midclavicular line. No evidence of any murmer or decompensation of the heart at present.
Right border on percussion is about 1" to the right of the rig border of the sternum. Upper border is at the Ist intercastal space.

Circulatory system: Pulse Rate.108. Other details as noted above. (in column local examinatio

Respiratory system:- R.R.-20.

Other findings - Normal.

Digestive system:- Tongue coated. V.P.Present. Evidence of a small m about ¾" diameter just 2" to the right of the mid-sternal line in the right hypochondrium.

Urinary system:- Trace of Albumen present. Urine high coloured.

Treatment:- Prisoner put on sippis diet, mixture Ant Acida, Larosti injections, Alkaline powders and menimal dose of degita

Diagnosis:- Jeojaenal ulcer with Myocarditis.

RECOMMENDATION:- I, T.Titus, M.B.B.S., hereby certify that convict No.9804 Padmaraja Shetty is in my opinion dangerously ill, suffering from Jeojaenal ulcer with Myocarditis. His illness has not been caused or aggravated by any acts committed by him in order to procure release, and I sincerely declare that in my opinion he is likely to die if he remains in confinement, but that he will have a reasonable chance of of recovery if he is released.

T. Titus

Medical Officer.

Central Jail Hospital,

Cannanore. 14.10-54

S.F. 52 (a)—28,76,506—20-1-54

By a special messenger

Jail Department

From (Name) Sri T S Ramachandran, ICS

Designation InsprGeneral of Prisons

Station Madras.

Received ——— Registered ———

To

The Secretary to Government
Home Department
Madras

Enclosures: No. 4114/S4/54 dated 20-10-1954 195

Sir,

Sub: Release on ~~parole~~ -medical grounds -C.No. 9804 Padmaraja Shetty - Medical Certificate - submitted.

Ref: This office letter No.4114/S4/54 Dated 19-10-1954.
Home Department Memo No. 125393 Cts IV/54 2 Dated 25-9-54
& Dated 15-10-54 - - -

ASSISTANT SECRETARY TO GOVERNMENT
20 OCT 1954
HOME DEPARTMENT

In continuation of this office letter cited, I submit herewith copy of letter from the Civil Assistant Surgeon. The Penitentiary Madras for favour of information.

136992

k/p/20-10

For Inspector General of Prisons.

p.t.o

Copy of letter No. Nil from the Civil Asst Surgeon The Penitentiary Madras dated 30th September 1954.

Convict No. 6425 Padmaraja Shettv

The above mentioned prisoner was received here from Central Jail Cannanore for specialist treatment at Govt General Hospital Madras on 27-8-53 for prain Abdomen. He was accordingly transferred to Govt General Hospital Madras on 1-9-53 for treatment there. He was received again here on 14-9-53 with advise for further medical treatment and return to GH at the end of six weeks. The prisoner was sent to the General Hospita, again on 16-11-1953 as required by G.H. He was operated upon at G.H. and discharged back to Penitentiary on 5-12-53. A diagnoses of peptic ulcer was entered on the G.H. discharge slip dated 14-9-53. He has been retransferred to his parent Jail on 19-1-1954.

Further details regarding operation notes are to be obtained from the office of the Govt General Hospital Madras please.

Sd. A. Babu Rau,
Civil Asst Surgeon
The Penitentiary Madras.

// True Copy //

For Insr.General of Prisons.

k/p/30-10

INSPECTOR GENERAL OF PR
1-OCT 1954
MADRAS

Copy of the letter from the Civil Assistant Surgeon, The Penitentiary, Madras dated 30th September 1954.

oxoxoxo

C.F. 32 — -70.10.558—20-1-54.

27

Jail Department

From (Name) Sri T.S. Ramachandran, I.C.S.,
Designation Inspr.Genl.of Prisons,
Station M a d r a s.l.

Received ——— Registered ———

To

The Secretary to Government,
Home Department,
M a d r a s.

Enclosures

No. 4114/S4/54, dated 3-11-1954 195

Sir,

Sub: Release on medical grounds - C.No. 9804 Padmaraja Shetty, Central Jail, Cannanore - regarding.

Ref: Home Dept.Memo.No.125393 Cts IV/54-1 dated 25-9-54. p3 above
Correspondence resting with this office letter No.4114/S4/54 dated 20-10-54. p23 above

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ASSISTANT SECRETARY TO GOVERNMENT 4-NOV 1954 HOME DEPARTMENT

In continuation of my letter cited, I submit herewith the following records relating to the above prisoner for favour of disposal.

p29 below

1. Copy of the report (No.M.L.Dis.6295/54 dated 30-10-54) from the Additional District Magistrate in charge(I), South Kanara.

Mid 14270 4-11-54

2. Copy of letter dated 15-10-54 from Sri P. Dharmaraju Bannu(son of the convict).

Mid

3. The certificate required under Rule 514(2) of the M.P. & R.M. Vol.II.

3/11/54

Inspector General of Prisons.

svl.311

Copy of letter M.L.Dis.6295/54, dt.30-10-54 from the Addl.Dist Magistrate in charge, South Kanara to the Supdt., Central jail Cannanore.

Sub:Prisoner - Release on medical grounds - Convict No.9804, Padmaraja Shetty - Report.

Ref: Your No.R.2/4067/54,dt.14-10-54.

Except the son and wife of the convict Padmaraja Shetty none of his relatives is willing to take care of him, if he is prematurely released on medical grounds. His relations are all perturbed on the prospects of his release, since they had deposed against him. They fear the convict may give vent to his feelings against them. The Dist.Supdt.of Police does not recommend the premature release of the convict.

2. In the circumstances the premature release of the convict Padmaraja Shetty is not recommended.

Copy of letter dt.15-10-54 from P.Dharmaraja Bonnu, Teacher, Board Higher Elementary School, Naravi addressed to theSupdt. Central jail, Cannanore.

Ref: Memo No.R.4071/54,dt.14-10-54 from your office.

Respected Sir,

With referene to the above, I am gladly willing to take care of my father Sri Padmaraja Shetty convict No.9804, if he released prematurely on medical grounds.

— x —

C E R T I F I C A T E.

Certified that I have satisfied myself that convict No.9804 Padmaraja Shetty will, if released, be suitably cared for.

(sd) xx xx xx
Supdt., Central jail, Cannanore.

/true copy/

FOR INSPR.GENL.OF PRISONS.

BY SPECIAL MESSENGER - RELEASE ON MEDICAL GROUNDS.

G.F. 321(c)—28,70,000—30-1-54.

Jail Department | Received Registered

From (Name) Sri T.S. Ramachandran, I.C.S.,
Designation Inspr.Genl.of Prisons
Station Madras

To
The Secretary to Government
Home Department,
Madras.

Memorandum No. 4114/S4/54, dated 5-11-1954 195

Sir,

Sub: Release on medical grounds - C.No.8804 Padmaraja Shetty, Central Jail, Cannanore.

Ref: Home Dept.Memo.125393 Cts IV/54-1 dated 25-9-54
Correspondence resting with this office letter 4114/S4/54 dated 3-11-54

143942

In continuation of my letter cited, I submit herewith the certificate of fitness to travel relating to the above prisoner.

for INSPR.GENL.OF PRISONS

svl.511

To

The Superintendent
Central Jail Cannanore.

Sub: Certificate of fitness to travel in respect of No 9804
Padma Raj Shetty
Ref: No R/4455/54 dated 1-11-54

Sir

Certified that Convict No 9804 Padma Rajshetty is technically fit to travel

Medical Officer

Pro: dent at [illegible] S-26 (J)
([illegible] 23 [illegible]

C. no. 125393 dis IV/54.

35 → Home Dept.

G.O. Ms. no 3346 d. 13.11.54

Prisoners - Release on medical grounds - Rule 514-A of the M.P.H.R. Manual, Volume II - Central Jail, ~~Trichinopoly~~ Cannanore - Convict no. 9804, Padmaraja Shetty - Sanctioned.

Read: 1) Petition from Sri P. Dharmaraja Burmu d. 21.9.54.

2) From the I.G. of Prisons, Madras. Nos. 4114/54/54 d. 8.10.54, 15.10.54, 19.10.54, 20.10.54, 3.11.54 and 5.11.54.

Order:

In exercise of the powers conferred by Section 401 of the Code of Criminal Procedure, 1898, the Governor of Madras hereby remits the unexpired portion of the sentence of transportation for life in all cases passed on the prisoner mentioned in the annexure to these proceedings, subject to the condition that he will be of good conduct during the unexpired period of sentence.

2. The prisoner on his release from the C. J. Cannanore should be handed over to the care of his son.

13/11/54

13 Nov 54.

To.

The I. G. of Prisons, Madras.
.. Supdt, C. J. Cannanore
.. A.D.P. (W) South Kanara.
.. Sessions Judge, S. Kanara.
.. I. G. of Police, Madras (with 15 C)
Sri P. Dharmaraja Burmu, Teacher, Boards Higher Elementary School, Narravi Post, Karkal Taluk, S. Kanara

P.T.O. Annexure.

15 C.

J6

Annexure.

C. J. Cannanore.

Number & name of convict.	Residential address including taluk & dist	Sentencing Court and case number	Sentence & date.
9804, Padmaraja Shetty	Gavadadi, Pullini South Kanara.	1) Sessions Judge, S. Kanara. S.C. no. 30/48.	~~Sent~~ Death subject to confirmation by the High court. 11.11.48
		2) High Court, Madras R.T. no. 122/48 (C.A. no. 667/48)	Death sentence set aside and instead, sentenced to transportation for life ti all. 21.2.1949

13/11/54.

n.7

HOME DEPARTMENT

C.No. 125393/Cts.IV/54.

Prisoners - Release on medical grounds - Central Jail, Cannanore - Convict No. 9804, Padmaraja Shetty.

Petition from Sri P. Dharmaraja Bunnu, dated 21.9.1954.
From the I.G. of Prisons, Madras, Nos.4114/S4/54 dated 8.10.1954, 15.10.1954, 19.10.1954 and 3.11.1954.

The petitioner has stated that his father is seriously ill and has requested that he may be released on medical grounds.

The prisoner was sentenced on 11.11.48 to death subject to confirmation by the HighCourt for having committed the murder of one Ramanna Semitha on the night of 7.2.1948 along with certain others. On appeal, the High Court reduced the sentence of death passed on the prisoner to one of transportation for life in all.

2. The prisoner was admitted into the Jail Hospital, Cannanore, on 9.9.1954. He is reported to be suffering from ~~Jejunal~~ Jejunal ulcer with Myocarditis. The Medical Officer, Central Jail, Cannanore has certified that the prisoner is likely to die if he remains in confinement but that he will have a reasonable chance of recovery if he is released.

The prisoner is 53 years old and was a land-lord prior to conviction. He has remained in jail for 6 years and the unexpired portion of sentence is about 9 years and 8 months. He will be completing 2/3rd sentence on 4.2.1960.

3. The Collector of South Kanara does not recommend the premature release of the prisoner for the reasons mentioned in his letter at p. 29 c.1 ~~The son of the prisoner is prepared to look after him if he is released prematurely on medical grounds.~~

P.T.O.

5/
18/11

[illegible] 52

529cf

The son of the prisoner ... , saied to look after him if he is released prematurely on medical grounds.

For orders.

B Rm
6/11/54 8-11-54

As he has been in jail for ~~5~~ six years he may perhaps be released in view of the medical certificate at ⌐21cf.

P.S. Sanders
8/11/54

⌐21cf

The medical report is clear that the prisoner will die if he is in prison and will have a chance of living if released. His son is prepared to look after him. The fear expressed that the prisoner will go out for vengeance if he is released appears hardly likely in his present precarious condition of health. He has also served 6 years in prison. He may be released on medical grounds.

J. Subbaraman.
10 Nov 54.

M. (F & E) Sethumanavan
12.11.54

Draft prepd. In a recent case of release on

12.5.93.

medical grounds, the premature release was unconditional. For orders whether in this case also the release may be unconditional. Subject to orders, the draft provides for it

13/11/54.

May be subject to medical & good conduct.

13/11/54

Draft amended with ref to A.S's orders above

13/11/54.

13.11.54

Draft approved

13 Nov 54.

Issued as G.O. Ms. no. 3346 Home d. 13.11.54.

SUPERINTENDENT
13 OCT 1954
GOVT. PRESS, CANNANORE

ASSESSOR CASE

In the Court of Sessions, South Kanara.

October Sessions.

Thursday, the 11th day of November 1948.

PRESENT:—C. KRISHNA MOOSE, ESQ., B.A., B. L.,

Sessions Judge.

Sessions Case No. 30 of 1948.

NAMES OF THE ACCUSED

1. Padmaraja Shetty.
2. Nemiraja alias Anni Semitha.
3. Babu Bunnu alias Srivarma Bunnu.
4. Nemu Poojary.
5. Annu Shetty.
6. Soma Poojary.
7. Kittu Poojary.
8. Karia Poojary.
9. Muthu Shetty.

CHARGES

I. Criminal conspiracy to murder—Section 120-B read with Section 302 I.P.C.—against all.

II. Murder—Section 302 read with Section 34 I.P.C.—against accused 1 to 8.

III. Abetment of murder—Section 109 read with Section 302 I.P.C.—against the 9th accused.

IV. Causing disappearance of evidence of murder—Section 201 I.P.C.—against all.

ASSESSORS — MESSRS.

1. Rama Varma Raja (Samantha Kshatriya).
2. A. Thimmappa (Billava).
3. J. M. Farias (R.C. Christian).
4. M. Madhava Bhat (G. S. Brahmin).

OPINION OF ASSESSORS

All the assessors are unanimous in their opinion that only accused 1 to 4 are guilty of the offences of murder and causing disappearance of evidence of murder under Sections 302 and 201 I.P.C. respectively and that they are not guilty of the offence of criminal conspiracy to murder under the 1st charge. They are further of the opinion that none of the other accused is guilty of any offence.

FINDING OF THE JUDGE

Accused 1 to 3 are guilty of the offence of murder under Section 302 read with Section 34 I.P.C. and all the accused are guilty of the offence of causing disappearance of evidence of murder under Section 201 I.P.C. None of the accused is guilty under the 1st charge. Accused 4 to 8 are not guilty under the 2nd charge and the 9th accused is not guilty under the 3rd charge.

SENTENCE

The 1st accused is sentenced to be hanged by the neck till he be dead subject to confirmation by the High Court, and accused 2 and 3 are sentenced to transportation for life, for the offence under Section 302 read with Section 34 I P.C.

Accused 1, 2, 4 and 5 are sentenced to R. I.

for a term of three years each and accused 3 and 6 to 9 are sentenced to R.I. for a term of two years each, for the offence under Section 201 I.P.C.

The sentences shall run concurrently so far as accused 1 to 3 are concerned.

The accused 1, 3 and 9 were defended by Sri G. Somashekhar Rao, pleader and Sri U. Vishwanath, advocate and accused 5 to 8 by Sri K. Y. Poojary, advocate, (private defence). The accused 2 and 4 were defended by Sri K. Devadas Nayak, pleader (Crown Brief).

The case was committed by Sri U. Lingappayya, B.A., Sub-Magistrate, Belthangady, in R.C. No. 1/48 on his file (F.I. No. 12/48 of Belthangady Station).

Judgment.

There are nine accused in all involved in this case. The accused Nos. 1 to 8 stand jointly charged with the offence of murder of one Ramanna Semitha at Padthire house of the 1st accused in Gardadi on the night of Saturday the 7th February 1948. The offence in this charge is punishable under Section 302 read with Section 34 of the Indian Penal Code. The 9th accused is charged with the abetment of the said offence of murder committed by the accused 1 to 8 punishable under Section 302 itself read with Section 109 of the Indian Penal Code. All the nine accused are further charged with the offence of causing the disappearance of the evidence of murder punishable under Section 201 of the Indian Penal Code. Lastly they are all charged with criminal conspiracy to commit the murder under Section 120-B of the Indian Penal Code.

2. Ramanna Semitha, the deceased, had married Chandravathi, a first cousin of the 1st accused and a member of the same Aliyasanthana family. For two or three years prior to his death he was living with his wife and son in the latter's Padthire family. The 2nd accused is a brother of the deceased, and a close confederate of the 1st accused. The 3rd accused is related to the 1st accused as his brother-in-law. The accused 4 to 9 are persons connected with the 1st accused either as his own tenants or of some others under his control and influence.

3. All the accused have denied the several charges and pleaded not guilty.

4. The Padthire family of the 1st accused is a well-to-do Aliyasanthana Jain family in Gardadi. The family house is surrounded by forest tracts with a few other houses mostly of the tenants of the family scattered here and there. In that small and remote locality the family apparently wielded considerable power and influence. The 1st accused became the manager of the family in about 1941 or 1942, his uncle Nemiraja Shetty having surrendered the management in his favour and left the family house in accordance with the decision of a panchayat brought about at the instance of the former. Before he took over the management, Chandravathi, the wife of the deceased with her mother Marudevi, and her son Sridhara was living away from the family house and deriving their maintenance from the properties set apart in that behalf by the former ejaman, Nemiraja Shetty. The 1st accused chose to set at naught the maintenance allotment in favour of Chandravathi's branch, and she with her mother and son was in the end obliged to return to the family house and take up residence there itself. Chandravathi's husband, Ramanna Semitha, who had been till then living with his wife and son, followed them to the family house and continued to live with them at Padthire. Their advent with a view to settle down in Padthire permanently was not relished by the 1st accused. He gradually shifted his residence to another house in the neighbourhood where Padmavathi, a rich widow, had recently taken up her residence at his instance. The relationship between the 1st accused and Ramanna Semitha became more and more embittered in course of time. The 1st accused refused to maintain Chandravathi and her son properly, and Ramanna Semitha on his part began to put obstacles in the way of the 1st accused having his own way with the affairs of the family. As matters thus stood, Ramanna Semitha contrived to remove a quantity of rice stocked in the family house and he sold the same for the money required for the expenses of his wife and son. Both his wife and son had in the meantime taken up their residence tempora-

rily in Belthangadi for the facility of medical treatment to Chandravathi, who had been ailing for some time, and also for the sake of the education of Sridhara, her son. The rice was removed by the deceased from the family house in the absence of the 1st accused on a Thursday. When the 1st accused heard of the removal of the rice by the deceased he seems to have become bitterly annoyed and exasperated. On the evening of the Saturday following that incident the 1st accused was seen in the company of accused 2 to 5 in Punjila house. He started from there with those other accused after dark, ostensibly for the purpose of removing what remained of the stock of rice in the family store to the Punjila house. On the way the 1st accused sent accused 3 and 4 to call the accused 6 to 8 also to join them. The 1st accused met the 9th accused on the way, and they were both talking together for a time, but the 9th accused did not, however, follow him immediately to Padthire house. Two guns had been secured and kept with the 6th accused two or three days before and the accused 3 and 4 had been told to get those guns also when fetching the accused 6 to 8 to Padthire house.

5. On reaching the Padthire house the 1st accused asked his mother Padmavathi whether the deceased had taken away any rice belonging to the family stored in the house. She replied that some quantity of rice had been removed on the previous Thursday. He at once asked the accused 2 and 5 to take out to the verandah the remaining stock of rice. In the meantime the deceased arrived at the front entrance to the inner courtyard of the house. Finding it bolted from inside he called out for opening it. The 1st accused, in answer to his call, said that he had done enough harm by staying in his house and so he might get away, and that on no account he would be admitted into the house. Heated and acrimonious exchange of words went on between the 1st accused and the deceased for a short while thereafter. In the end it led to the 1st accused and his companions or followers suddenly proceeding to the spot, where the deceased was standing, through a small passage behind the house opening from the inner courtyard into the outer courtyard. While so going out the 1st accused took the gun that the 3rd accused was holding and the latter himself received another gun that the 4th accused had brought. It was a dark night. The 1st accused flashed a torchlight and fired one shot at the deceased. That shot was closely followed by another shot fired from the 3rd accused's gun. The deceased dropped in the porch at the entrance in a sitting or crouching posture. Some or all the accused rushed towards him and began to beat him mercilessly with sticks. He cried out to his old mother-in-law who was inside the house that he was being beaten and killed. Having heard the two shots and hearing also the cries of the deceased the old woman Marudevi came out by opening the front door. She had a lantern in her hand and she saw the accused 1 and 2 still engaged in beating and battering the deceased. She implored them to desist and then they ceased beating the victim. Marudevi found the deceased bleeding profusely from his head and abdomen which had been pierced. The 1st accused's mother Padmavathi also came out to the porch by that time and she too saw the injured man wriggling and crawling in mortal agonies. Marudevi sprinkled some water over him. The deceased was then seen frantically attempting to get up and walk towards the field adjoining the courtyard. He, however, dropped down in the drain between the courtyard and the field. The two old women found themselves awe-stricken and entirely helpless. They realised also that the deceased was in his death agonies and nothing that they might do would be of any avail. They both withdrew inside after a time in unspeakable sadness and horror being unable to bear any longer the gruesome and revolting sight before them. The 1st accused immediately despatched the 4th accused and Parava Bogra, since made an approver, to collect men in order to cut and prepare firewood for burning away the body of the deceased forthwith. He himself retired for a short while to Punjila house. By chance his wife's uncle, Nemiraja Athikari, was staying there that night. He was called in and told by the 1st accused himself that by some ill-luck he had a fatal encounter with the deceased and the latter was shot dead by him. He returned to Padthire house and on the way he was joined by the 9th accused with whom he was heard talking and the talk indicated that he and the 9th accused had discussed previously the subject of killing the deceased, if he would interpose himself in the 1st accused's way as anticipated. At Padthire house preparations were already going on in a hurried manner for the burning away of the

dead body of the deceased. The 9th accused readily joined in those preparations and helped the other accused and the coolies for preparing the cremation pyre and also for carrying the body to the pyre. The 1st accused next entrusted the two guns to witness Kittu Moolya for being concealed in the forest, and asked the accused 6 and 8 to scrape and rub away the blood stains in the porch of the house and also in the drain where the deceased had fallen down. Afterwards he sent the 5th accused and Parava Bogra to Belthangady to decoy the deceased's wife on the pretext that her mother Marudevi had suddenly fallen seriously ill. Chandravathi, the wife of the deceased, however, did not believe them and she refused to come away with them. Early next morning the 1st accused sent for Kunha Pujary, a well-known physician who could treat for snake bites, and told him that he should give out that the deceased had been bitten by a snake and, though he treated him, he died as a result of the snake poison. When Chandravathi refused to come away with the 5th accused and Parava Bogra, the 1st accused prevailed upon her son Sridhara himself to go and tell her that her mother was really ill and she should come away at once. Chandravathi, however, argued with her son that if really her mother were ill, her husband would have gone to her to take her to Padthire and she again refused to go. One other attempt was made on the night of the third day to induce her to come away, and this time on the representation that her husband was himself badly ill with dysentery at Padthire. These repeated attempts instead of persuading Chandravathi to leave the place filled her with painful anxiety and dark forebodings about her husband's life and safety. On Tuesday morning she went to the police station at Belthangadi and made a complaint setting forth the circumstances about the existence of bitter and longstanding enmity between her husband and the 1st accused and the reasons for her fear that some harm might have come to her husband through the 1st accused and his confederates.

6. The complaint was recorded at the police station by the head-constable then in charge at 10 a.m. The Circle Inspector of Police got the information at 4 o'clock in the afternoon, and he immediately proceeded to Gardadi for investigation into the complaint. He sent for Chandravathi and met her on the way. He recorded her statement in the first instance and then went to Padthire house. He noticed signs of recent scraping and cleaning on the walls and floor of the porch at the main entrance to the house. He noticed also a hole in the wall filled up with fresh earth. The hole appeared to be one caused by a bullet. Further, he observed signs of recent cremation of a body on a site in the dry field in front of the house. He examined Padmavathi and Marudevi, the two old women, the only inmates of the house. He questioned several of the neighbouring residents mostly tenants or dependants of the 1st accused's family. He searched the Punjila house, where the 1st accused had been mostly living at the time, and questioned Padmavathi for whom that house had been taken up by the 1st accused. None of the accused was available for immediate arrest. The accused 2 and 8 were arrested on the 12th February 1948. The accused 3, 4, 6 and 7 were arrested on the 13th. The 9th accused was arrested on 17-2-1948 at Kukkala. In pursuance of certain statements made by the 2nd accused, a few pieces of burnt bones were traced as thrown away into a wet field and those were seized by the police. The 2nd accused's statement to the police further supplied information leading to the discovery of the two guns that were actually produced by Kittu Moolya from the place of concealment in the forest. At the time of the arrest of the 8th accused he was wearing a shirt that showed marks of blood stains on it. His shirt was also accordingly seized by the police. Parava Bogra, who, too, had been originally classed as an accused was arrested on 17-2-1948. He made a statement before the Tahsildar-Magistrate on 23-2-1948, wherein he set forth in detail all the important facts touching the offence. The 4th accused also made a sort of confessional statement, when examined under Section 164 of the Criminal Procedure Code on 25-2-1948, though he had a few days before refused to make any statement. The accused 1 and 5 were still absconding. A provisional charge-sheet was, however, laid on 25-2-1948. The 1st accused was at last arrested at about mid-night in the house of one Bermu Kottari, in Laila on 21-3-1948. The 5th accused surrendered himself shortly afterwards on 25-3-1948. The police sent up the guns and other objects seized in the course of the investigation for examination and testing by the concerned experts. The Chemical Examiner reported that the blood

stain seen in the shirt seized from the 8th accused was caused by human blood. With regard to the two guns the tests revealed the presence of gun powder, indicating that those would have been used for firing, but the tests did not definitely indicate the probable time of the firing. The police completed the investigation and laid the final charge-sheet in due course.

7. As said at the beginning, all the accused have denied, both in the committal Court and here, that they had anything to do with the death of the deceased. The 1st accused said that he remained in Punjila house throughout that night and never went to Padthire house at all on the night of the alleged occurrence. He explained the fact of his own mother figuring as a prosecution witness by saying that there was intense ill-feeling between his sister and himself and the old mother was a helpless tool in the hands of his sister who easily made her to perjure herself against him. He similarly stated that the other witnesses were all instigated to give false evidence implicating him in the offence by his uncle Nemiraja Shetty and the deceased's wife Chandravathi, who were both ill-disposed towards him. He denied in particular that he had any conversation with his wife's uncle Nemiraja Athikari at Punjila house on the night of the occurrence or that he had anything to do with Kittu Moolya or Parava Bogra, not to say the rest of the witnesses appearing on the prosecution side. With regard to his absence from the village soon after the occurrence he said that he had to leave for the ghats in connection with his business of supplying coolie labour.

8. The remaining eight accused also similarly stated that they never went to Padthire house or knew anything about the death of the deceased on the night of the occurrence. The 2nd accused stated further that there was no ill-feeling between him and the deceased, his elder brother, and that the report that he made to the patel about his death by snake bite was based merely upon information conveyed to him by Nemiraja Shetty of Padthire house himself. He further denied having made any statement to the police leading to the discovery of the guns or the burnt-pieces of bones or any other objects.

9 The 3rd accused, besides being the brother-in-law of the 1st accused, is also a nephew of witness Nemiraja Athikari. He has said that there were serious differences between him and his uncle and it is at the instance of his uncle that he has been implicated in the offence.

10. The 4th accused, besides denying that he was under any obligations to the 1st accused, explained his statement before the Tahsildar-Magistrate by saying that he was induced to state what he narrated partly under threat by the police and partly under the promise held out by the police through witness Kittu Moolya that he would be immediately set at liberty if he would make the statement as told by the police.

11. The 5th accused similarly denied that he was under any obligations to the 1st accused, he being only a tenant of Padthire family of which Nemiraja Shetty and not the 1st accused was the head.

12. The 6th accused, besides denying that he had any part whatever in the offences set out in the charges, has said also that Nemiraja Shetty, the 1st accused's uncle, was instrumental in procuring the evidence of some of the prosecution witnesses to speak falsely against him and the rest of the accused. He denied that he lived in the house of his wife with witness Jinnu.

13. The 7th accused too denied that he was a tenant or a person under obligations to the 1st accused at the relevant time. As said already he has denied that he ever went to Padthire house or knew anything about the occurrence at that house on the night in question.

14. The 8th accused has stated that he was absent from the village having gone to Gujjottu earlier on that day. He explained the presence of blood stains in his shirt by saying that his nephew had sustained a wound in his hand and blood from that wound had fallen on his shirt.

15. The 9th accused has similarly stated that he had gone to a relation's house in Modankap on the day of the occurrence, and that he had no sort of talk with the 1st accused, much less any part in the occurrence at Padthire house that night. With regard to his absence from the village after the occurrence he has said that he had gone to Kukkala to purchase bullocks. Lastly he has said that the witnesses

have all come forward to give false evidence under the influence of Nemiraja Shetty and Marudevi of Padthire family, who were ill-disposed on account of their long-standing enmity towards the 1st accused.

16. The charges 1 and 3 may be shortly disposed of at the outset. No serious attempt was made by the prosecution in the course of the trial to substantiate the first charge under Section 120-B of the Indian Penal Code. No evidence worth mentioning is adduced at all for the purpose of proving that all these accused or some among them joined together and resolved upon killing the deceased and the murder was committed in pursuance of any such resolve. The facts brought out in evidence, on the other hand, would clearly suggest that, if at all any of the accused had met together and discussed anything touching the events of the day, those could have been only the accused 1 to 4 and possibly the 5th accused also. And even as regards the meetings of those accused on that day, there is nothing to indicate clearly the purpose of their meeting or what matters, if any, were discussed or agreed upon at that meeting. All that is reasonably deducible even from the confessional statement of the 4th accused, Exhibit P13, and the evidence of the approver Parava Bogra is that the 1st accused told them that rice had to be removed from Padthire house to Punjila house. There was apparently no hint at all of any design to kill the deceased formulated at the first meeting of these accused. The accused 6 to 8 were apparently called to join the rest on the way only and, even after they joined the party, there was no talk of any plan to kill the deceased revealed on the evidence. It is true that the 1st accused had taken the precaution of two guns being brought to the house by the accused 3 and 4, but that circumstance by itself will not prove affirmatively that there was a concerted plan to kill the deceased; for, guns could as well be used as weapons of defence or resistance and not merely as weapons of offence. The 9th accused was not even present at Padthire house at the time of the attack. It was, however, vaguely stated by P.W.14 Monappa that he heard a rather obscure conversation between the 1st accused and the 9th accused soon after the shooting of the deceased had taken place, and, in the light of what he knew of the occurrence, he understood the conversation to refer to some previous talk between them about the expected encounter with the deceased man and a determination to kill the deceased if he would interpose himself in the way of the 1st accused. The evidence of P.W.14 in this respect does not at all strike one as very natural and convincing and so it will be entirely unsafe to infer the existence of a criminal conspiracy to murder the deceased from the rather enigmatic talk that the witness is said to have overheard. The evidence of P.W.6 Lakshmi is also far too remote to establish the link to connect the 9th accused or any other accused with the murder on the basis of any pre-arranged plan or conspiracy. The evidence bearing upon this charge is thus manifestly too slender and insufficient. The learned Public Prosecutor frankly stated also at the end of the trial that the prosecution was not pressing for a conviction of any of the accused under this charge. All the assessors naturally expressed the opinion that none of the accused was shown to be guilty of the offence under the first charge of criminal conspiracy to murder the deceased. It is unnecessary to refer to this charge in any greater detail.

17. With regard to the 3rd charge of abetment of murder against the 9th accused, it will be remembered that the 9th accused came on the scene only while the preparations for cremating the body of the deceased had already made some headway. And as already said there is no satisfactory evidence at all in the case to prove that there was any prior discussion and concerted plan between the 9th accused and any other accused to commit the offence of murder. The charge of abetment of murder against the 9th accused will also consequently fail. It is unnecessary to discuss this charge also in any great detail in the light of the actual evidence touching it, which, by the way, is, for all intents and purposes, the same as relating to the first charge of conspiracy that has been already adverted to.

18. There remains the 2nd charge against accused 1 to 8 for the offence of murder under Section 302 read with Section 34 of the Indian Penal Code and the fourth charge against all the 9 accused for the offence of causing the disappearance of the evidence of murder under Section 201 of the Indian Penal Code. On these charges the main points for consideration will be: (1) Whether it is proved satis-

factorily that Ramanna Semitha, the deceased, met with his death as a result of violence at the hands of some one or more assailants, (2) Whether the culprits that perpetrated the acts of violence resulting in his death are in fact all or any of the accused 1 to 8 before the Court, and (3) Whether all or any of the accused did any act, subsequent to the death of the deceased, to cause the disappearance of the evidence relating to his death, with the knowledge that he had been murdered.

19. It is common ground that Ramanna Semitha was living in his wife's family in Padthire ever since his wife and son returned to the family house and took up residence there a little over two years before the occurrence. It is again common ground that his wife and son had temporarily shifted their residence to Belthangadi some days before the occurrence, partly for the facility of medical aid to the wife, who had been ailing, and partly for the convenience of the son's education. It is also common case that bitter hostility had grown up for various reasons between the 1st accused and the deceased. The 1st accused was in actual management of the affairs of the family of the deceased's wife. Soon after he took up management in 1941 or 1942, he set at naught the maintenance allotment in favour of the branch of the deceased's wife that had been in vogue during the time of the previous manager. After the deceased's wife and son took up residence in the family house the rupture in the relationship between those members and the 1st accused became further widened. The 1st accused gradually changed his residence to another house in the neighbourhood, which the 1st accused himself had taken up for the use and residence of a rich widow named Padmavathi under his influence in some manner or sort. When the 1st accused did not make adequate provision for the maintenance of the deceased's wife and son, in spite of frequent demands by the deceased, the latter took away some quantity of rice stocked in the family house and sold it, some two or three days before the occurrence. The 1st accused apparently got enraged on coming to know of that rather high-handed act of the deceased and on the evening of the day of the occurrence he seems to have resolved to remove the rice that was still left behind in the house to his own residence, namely, Punjila house. The deceased had gone to Belthangadi, where his wife and son were staying and the only inmates of the house present in the house at that time were Padmavathi, the old mother of the 1st accused and her younger sister Marudevi, the mother-in-law of the deceased. The above facts are all either admitted or such as emerging so clearly from the evidence as to admit of no manner of doubt or controversy.

20. Now coming more particularly to the events immediately or more proximately connected with the offence, it will be noted that it is proved by the testimony of a number of prosecution witnesses, including the aged mother of the 1st accused and her equally aged sister Marudevi, that Ramanna Semitha sustained his fatal injuries some time after nightfall on Saturday, the 7th February 1948 and he died on the same night. It appears to be scarcely disputed also from the side of the defence that Ramanna Semitha died at Padthire house on that night, though a statement made by the 2nd accused to the patel on 10-2-1948 would seem to suggest that he at one time chose to put forward a theory that the deceased met his death by snake bite and he actually died on the night of the 8th only. However, none of the accused has any definite case at present that the deceased did not die on the 7th night. It may be, therefore, taken as hardly controverted now that the deceased died on the 7th night itself at Padthire house.

21. As said already, the only inmates of the house present in the house, besides the deceased himself on that fateful night, were the two aged women, Padmavathi and Marudevi afore-mentioned. Padmavathi, it will be recalled, is none other than the mother of the 1st accused and Marudevi is her younger sister. Padmavathi is aged 75 and Marudevi is only 10 or 15 years younger in age. Padthire house is situated in a sparsely populated forest tract with a few other houses mostly tenanted by dependants of Padthire family and scattered out here and there. The evidence of Padmavathi and Marudevi, afore-mentioned, should in these circumstances be regarded as of the greatest importance and value. The testimony of Padmavathi, as far as it goes, would be particularly valuable also for the reason of her natural relationship and motherly feelings towards the 1st accused. Her instincts naturally would be only to minimise the guilt of the 1st accused and never to exaggerate the

same, humanly speaking. The evidence of both these persons, examined as P.Ws. 10 and 11, thus would call for special consideration before dealing with the rest of the evidence in the case.

22. Padmavathi, the mother of the 1st accused, has clearly deposed in her evidence that her son arrived with the accused 2, 5 and some others shortly after it was dark; that after some talk with her and her sister, had the remaining rice from the store room taken out to the verandah; that at that juncture Ramanna Semitha arrived at the front entrance that had been closed from inside and called out for opening the doors; that her son replied in anger and excitement that enough harm had already resulted from his staying in the house and so he would, on no account, be admitted again into the house; that the front doors were not, therefore, opened and Ramanna Semitha remained standing outside under the porch at the entrance; that the exchange of hot words having reached the climax, the 1st accused suddenly went out with his followers, opening the door-way in the hind part of the house and immediately after that she heard two shots being fired, followed by the cry of Ramanna Semitha that he was being beaten and killed; that her sister Marudevi opened the front door and went out and she too joined her in a few moments; that she saw Ramanna Semitha lying injured at the entrance to the house; that there was blood near him and he appeared to be in a very precarious condition; that she asked her sister to sprinkle water; that thereafter he was seen attempting to rise up and move towards the adjoining field, but in the attempt he fell down into the drain; that she thought that she could not do anything useful to him in that state and so withdrew into the house in utter sadness and dismay; and that early next morning, when she came out, she saw flames from the field in front of the house casting bright light on the trees in the compound. This version of Padmavathi, the mother of the 1st accused, is fully corroborated and further supplemented by the evidence of Marudevi, her younger sister. She has stated, in addition, that she saw all the accused and Parava Bogra, the approver, among the persons that had gathered in the inner court-yard just before the arrival of the deceased at the front door that had been closed and bolted from inside. She has further stated that, when she went out with a lantern in her hand, she saw the accused 1 and 2 still striking the deceased with sticks mercilessly. She has also stated that, during the night as well as on the next morning, servants and coolies were seen rubbing and washing the floor and walls of the porch as well as the outer court-yard and the drain into which the deceased had fallen. It is true that neither Padmavathi nor Marudevi saw any of the accused actually fire shots from the guns. But the latter had seen the accused 1 and 3 dart out with guns followed by several others and also saw the accused Nos. 1 and 2 actually belabouring the deceased by dealing blow after blow after he had dropped down apparently as the result of being hit by the shots fired from the guns. If the testimony of these two aged women is to be taken as substantially true it must be taken as clearly established that Ramanna Semitha must have died as a result of injuries sustained by him by the shots fired at him from guns and by the blows dealt to him by the accused 1 and 2 after he had been shot at. The only further link remaining to be established by other evidence would be as to who actually fired the shots that inflicted the first fatal injury upon the deceased. That evidence, in this instance, is supplied partly by the direct evidence of the approver Parava Bogra, examined as P.W.8, and partly by the circumstantial evidence furnished by other witnesses including P.W.11 Marudevi. Marudevi in her evidence has clearly deposed that she saw the 1st accused receive a gun from the 3rd accused before he went out with the rest of the accused and the approver. She has similarly stated that the 3rd accused after handing over the gun that he had with him to the 1st accused was seen to take the gun that the 4th accused had brought with himself. If this statement of Marudevi is to be taken as true, it will afford sufficient circumstantial evidence to corroborate the approver's version that it was the accused 1 and 3 that fired the shots from the guns at the very beginning of the attack. Having enough evidence already to prove that it must have been the accused 1 and 3 that actually shot at the deceased, it may be permissible also to take into consideration the confessional statement of the 4th accused, Exhibit P13, which is also to the same effect. It should be also remembered that the accused 1 and 3 were the natural leaders of the party and it is highly probable that they themselves played the more

conspicuous parts by shooting at the deceased. There is again the evidence of P.W.5 Nemiraja Athikari, the uncle of the 1st accused's wife, who happened to be staying with the 1st accused on the night in question, that the 1st accused, who had gone out in the company of some other accused at dusk, was seen in an agitated state of mind at about midnight and he told him that there was a quarrel between him and the deceased and that as the fate would have it, he shot the deceased dead. Yet another piece of corroborative evidence is the testimony of P.W.17 Kunha Pujary, who has deposed that the 1st accused sent for him on the morning of the very next day after the occurrence and after saying to him that he had shot and killed the deceased wanted him to give out that he had treated the deceased for snake bite and the latter, however, died on account of the snake poison. The 3rd accused is a youth of 22, apparently under the dominating influence of his elderly relation, the 1st accused. All available evidence in the prosecution case would clearly indicate that he acted in close concert with the 1st accused and fired a shot at the deceased no sooner than the 1st accused fired one from his gun. Having regard to the fact that he had gone and fetched the gun and went out closely following on the heels of the 1st accused with the gun and fired his gun more or less simultaneously with the shot fired by the 1st accused himself, taken along with his relationship and intimate association with the 1st accused, it will not at all be a far-fetched inference that he too shared the intention of causing the death of the deceased by shooting him which the 1st accused evidently had at the time of firing the shot from his gun. The question whether the shot fired from the 1st accused's gun or the one fired from the 3rd accused's actually hit the deceased would be somewhat immaterial, if the position stated above about the common intention is to be taken as correct. (See the decision in **Barendra Kumar Ghosh** Vs. **Emperor** (I.L.R. 52 Calcutta 197 P.C.)). That the 3rd accused received the gun from the 4th accused when the latter proceeded to the spot where the deceased was standing, is spoken to not only by Parava Bogra but also by Marudevi P W.11. That he was sitting on the verandah and chewing betel with the 1st accused at the time of the arrival of the deceased at the entrance, is spoken to by the 1st accused's mother Padmavathi herself. These two old women appear to narrate the events of that fateful night in a remarkably natural and spontaneous, manner, and it is difficult to believe that they could have invented the incidents out of their own imagination with a view to spite the 1st accused and his confederates, the 1st accused being none other than the only son of Padmavathi, P.W.10 herself. It seems to me that on the evidence, both direct and circumstantial, considered together, it can be very safely inferred that the shots were fired from the guns by the accused 1 and 3 and the deceased dropped down as a result of being hit by both or at least by one of the shots. If this inference is correct, there can be no question also that both the accused 1 and 3 are guilty of having shot at the deceased with the intention of causing his death and actually having caused his death.

23. Now coming to the part played by the 2nd accused in the offence, it is clearly brought out in evidence that he was at the relevant period living with the 1st accused in the closest bond of comradeship. It is also in evidence that there was longstanding enmity between the 2nd accused and his elder brother, the deceased. The fact that he had come to Padthire house with the 1st accused on the night of the occurrence is spoken to by both Padmavathi and Marudevi, leaving aside the evidence of the approver Parava Bogra and the confessional statement of the 4th accused. Marudevi has further stated unequivocally that when she opened the front door and came out she clearly saw the 2nd accused also beating the deceased in a most brutal manner after he had fallen. There is also the evidence of P.W.9 Jinnu that the two guns had been taken to the 6th accused's house by this accused two or three days before the occurrence for safe keeping. Almost all the prosecution witnesses speaking to the events closely following the death of the deceased have referred to the very prominent part played by the 2nd accused in arranging the hurried cremation of the body. Believing the evidence of Marudevi and also relying upon the evidence of the approver Parava Bogra so far as it is consistent with her evidence, I am of opinion that the 2nd accused acted in concert with the accused 1 and 3 in the act of killing the deceased. It may be that there was no definite plan for actually killing the deceased in all eventualities before the deceased actually

arrived at the entrance at the fatal time. But there can be little doubt that when accused 1 to 3 went out together and proceeded to the place where the deceased was standing, they must have had the common intention of killing the deceased at any cost. The action of the 2nd accused in dealing brutal blows to the deceased after he had fallen down badly hit already by the shots fired from the guns is, in my opinion, consistent only with his sharing the intention of killing the deceased in the same degree as accused 1 and 3 though the shots had been fired in the first instance by those two accused alone. It will be also remembered in this context that this accused made a report to the patel of Gardady on 10-2-1948 that the deceased was bitten by a snake on the 7th night and he died on the night of the 8th despite the efforts of the physician Kunha Poojari P W.17 to effect a cure. He has not cared to substantiate the truth of this report at the trial. The inference is irresistible that he made that report with the set design of concealing the true cause of the death for reasons not far to seek. This is yet another very significant circumstance pointing to the responsibility of this accused for the murder. The evidence of the approver P.W.8 being corroborated not only by the evidence of P.W.11 Marudevi, but also by a number of highly suggestive circumstances must be, therefore, taken as true so far as this accused's part in the crime is concerned. The charge under Section 302 read with Section 34 is, in my opinion, inescapably brought home to this accused also.

24. Now coming to the question whether all or any of the remaining accused 4 to 8 concerned in this charge really took part in the offence in such a way as to render themselves guilty of the offence along with the accused 1 to 3, it should be said at once that there is hardly any tangible evidence adduced in the case to prove definitely that, except following the 1st accused, when he went out of the inner courtyard for shooting the deceased, they did any overt act from which a common intention to shoot or kill the deceased could be reasonably inferred. It is true that they are all apparently people gathered together at the house for helping the 1st accused and willing persons to carry out his orders in general but that would not necessarily show that they shared the intention of the 1st accused to kill the deceased or even that they would have gone to the extreme length of committing the offence of killing the deceased even if the 1st accused had asked them to kill him. Even the approver P.W.8 does not ascribe any overt act done in the course of the attack of the victim to any of the accused 5 to 8. True, the approver has stated that the 4th accused also joined the accused 1 to 3 in dealing blows to the deceased after he had been shot, but that statement of the approver is not corroborated by any other piece of evidence and, in fact, is in a large measure inconsistent with the evidence of Marudevi who has said only that the accused 1 and 2 were seen beating the deceased when she opened the door and went near the victim. I do not think it safe to rely upon the approver's evidence alone and hold that the 4th accused also joined the accused 1 to 3 in causing the injuries to the deceased leading to his death. As regards the accused 5 to 8 there can be no doubt whatever that they had no part at all in shooting or beating the deceased and causing his death. Their mere presence on the spot at the bidding of the 1st accused cannot be taken as indicating a common intention to kill the deceased so as to invoke the provisions of Section 34 I.P.C. against them. Further, it should not be forgotten that as far as deducible from the evidence the primary object with which these people were collected by the 1st accused on that occasion could have been only to carry away the remaining stock of rice from Padthire house to Punjila house, if necessary by overcoming the resistance of Ramanna Semitha at all costs. Regard having to all these circumstances, it will not be at all proper or safe to hold that the accused 4 to 8 shared the common intention of the accused 1 to 3 either before or in the course of the commission of the acts resulting in the death of the deceased. A definite intention to kill the deceased even on the part of the accused 1 to 3 might have materialised itself only when the 1st accused suddenly started from the inner courtyard receiving the gun from the 3rd accused and asking the rest of the accused to follow him. The accused 4 to 8 have had no further talks or discussions with accused 1 to 3, and, as the evidence would clearly indicate, they did not do any other act than following the accused 1 to 3 in implicit obedience to the bidding of the 1st accused. It will be further noted in

this connection that the confessional statement of the 4th accused, Exhibit P-13, is also more consistent with the view that there was no concerted plan to kill the deceased; and the persons, who committed the offence, took the decision to kill on the the spur of the moment without holding any sort of consultation or discussion with those that followed them. It would follow that none of the accused other than the accused 1 to 3 can be justly or properly held responsible for the causing of the death of the deceased, and, therefore, the charge under Section 302 read with Section 34 of the Indian Penal Code should be taken as not made out against the accused 4 to 8. I have already said earlier that the charge of abetment of murder against the 9th accused rested entirely upon extremely slender and unreliable evidence and, therefore, that charge also would fail. The result of the foregoing then will be that the charge under Section 302 read with Section 34 of the Indian Penal Code should be taken as satisfactorily made out only as against accused 1 to 3. The rest of the accused should be acquitted of the charge of murder or the abetment thereof.

25. There remains the charge under Section 201 I.P.C. against all the nine accused in this case. The evidence of a large number of witnesses has been tendered in proof of this charge. P.W.11 Marudevi saw the accused 4 to 8 also along with accused 1 to 3 in the inner courtyard of the house just before the attack against the deceased began. Accused 4 and 5 had been also seen at Punjila house earlier with the accused 1 to 3 by P.W.6 Lakshmi Moolyathi. P.W.9 Jinnu has stated that the 6th accused was keeping in his care and custody the two guns for a day or two before the occurrence till they were actually taken away by the accused 3 and 4 just before the occurrence. The 4th accused went with the approver to call the Adidravida coolies to cut and prepare firewood for burning away the body. The 5th accused, after the preparations for the cremation of the body were over, went with the approver to Belthangadi in the attempt to prevail upon Chandravathi to come away that night itself to Padthire. The 4th accused is a tenant of Punjila Padmavathi with whom the 1st accused was living at the relevant time. The accused 5 to 9, as the evidence would clearly suggest, are tenants of Padthire family that was then under the sole control and management of the 1st accused. As to the details of the acts done by these several accused for the purpose of burning away the dead body of the deceased after he was killed, the evidence is furnished by the witnesses, who also took part in one form or other in the preparations hurriedly set on foot soon after the fatal attack was over. It should be conceded that those witnesses are themselves accomplices in a sense and, therefore, their evidence should be regarded with some degree of caution, but it should not be forgotten that they were mostly helpless tools in the hands of their powerful landlord, the 1st accused, and were not apparently willing participants in the acts that they committed at the bidding of their patron and landlord. The degree of infirmity attaching to the accomplices' evidence would vary according to the special circumstances of each case. And in the present instance it seems to me that it is virtually negligible. The facts are essentially analogous to those referred to in the following passage in **Srinivas Mall Bairoliya** vs. **Emperor** (1947 M.W.N. Cr. 125 at 130).

> "Finally, it was urged that reliance had been placed on the uncorroborated evidence of accomplices. Section 133 of the Indian Evidence Act expressly provides that 'an accomplice shall be a competent witness against an accused person' and that 'a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.' No doubt the evidence of accomplices ought as a rule to be regarded with suspicion. The degree of suspicion which will attach to it must however vary according to the extent and nature of the complicity: Sometimes, as was said by Sir John Beaumont, C. J., in **Papa Kamalkhan** V. **Emperor** (I.L.R. 59 Bombay 486) the accomplice is 'not a willing participant in the offence but a victim of it.' There is ground for saying that the accomplices in this case acted under a form of pressure which it would have required some firmness to resist."

26. The several witnesses, namely, P.W.12 Audu, P.W.13 Kalu, P.W.14 Monappa, P.W.16 Kittu Moolya, as well as the approver P.W.8 would all essentially come within the description of persons who possibly acted under some 'form of pressure

which would have required some firmness to resist' and, therefore, their evidence cannot be so lightly brushed aside as of no weight or value. They are, moreover, ignorant village folk in notably humble stations in life, not unnaturally depending to a degree of unquestioning obedience upon the 1st accused, the powerful landlord. They gave evidence from the box in a blunt and natural way. It is difficult to believe that any sort of conceivable motive existed for them to come forward and give deliberately false evidence against any of these accused. The theory that they are all set up by Nemiraja Shetty, the 1st accused's uncle, appears to me to be rather incredible, having regard to the fact that Nemiraja Shetty had left the family several years back and even if he might have resented the 1st accused's snatching away from him the management of the family he would have reconciled himself to it long since. Not only P.W.8, the approver, but every one of the several witnesses, Audu, Kalu, Monappa Moolya and Kittu Moolya has stated in detail the respective parts played by each one of these accused in furtherance of the decision to dispose of the dead body on the night itself and also to obliterate the blood-marks and other signs of the offence from the courtyard and the drain. It is true that the 9th accused joined th e others only after the preparations had proceeded to a certain stage, but that circumstance would not make any difference in so far as he too actively participated in the further progress of the same. The 1st accused gave the order to the other accused to collect men to prepare firewood for disposing of the body as soon as he left the victim alone on the intervention of his mother's sister Marudevi followed by his mother herself. The 2nd accused actually supervised the preparations that were then started immediately. The 3rd accused appears to have retired to Punjila house or somewhere else for a time after the deceased had been killed, but he returned to Padthire before the body had been burnt away. The evidence of P.W.8, the approver, would further go to show that he and the accused 1 and 2 jointly suggested that the body should be burnt away immediately and that the 4th accused should go at once to call together the Adidravidas for that purpose. The fact that he was one of those that caused the death of the deceased, taken along with his close relationship and associations with the 1st accused, would leave no room for doubt that he too must have shared the common intention of the 1st accused and the rest in causing the disappearance of the body by burning it away on the very night. Having seen that there is *prima facie* clear proof of the offence as against all the nine accused, it will be permissible also to refer to the confessional statement of the 4th accused which is in substantial agreement with the testimony of the several witnesses already referred to. Looking at the evidence as a whole, I have not the least doubt that all the nine accused joined in the offence of causing the disappearance of the evidence of murder and, therefore, the charge under Section 201 of the Indian Penal Code is clearly brought home to every one of them.

27. All the four assessors were of opinion that the offence of murder under Section 302 as well as the offence of causing the disappearance of the evidence of murder under Section 201 of the Indian Penal Code was made out against the accused 1 to 4 but not against any of the rest of the accused. They expressed also the view that the accused 5 to 9 were not guilty of any of the offences in the various charges. For the reasons already stated in the foregoing I would hold that the accused 1 to 3 alone are shown to be guilty of the offence of murder, but the offence of causing the disappearance of the evidence of murder, with the requisite knowledge of the offence, is established beyond any shadow of doubt against all the nine accused. But all the nine accused will be acquitted of the offence of criminal conspiracy concerned in the first charge under Section 120-B and the accused 4 to 8 shall be acquitted of the offence of murder, and the 9th accused shall be acquitted of the offence of abetment of murder for the reasons set forth in the preceding paragraphs dealing with the relevant charges.

28. Now coming to the question of sentence, it will be recalled that the deceased was first shot by the 1st accused who was closely followed by the 3rd accused by firing a shot from his gun and with that the victim dropped down. Even after he fell down he was mercilessly beaten with sticks till his old mother-in-law came out and intervened. The 1st accused ordered the burning away of the body of the victim even before he was actually dead, though, as

the evidence would indicate, he had died as a fact before the body was actually carried to the pyre. There can be no doubt, in these circumstances, that the 1st accused committed the offence in circumstances of extreme brutality and fiendish cruelty. The 2nd accused acted in close collaboration with the 1st accused, but he seems to have participated in the offence more to please the 1st accused than out of malice or grudge that he himself bore against the deceased, who was his elder brother. The 3rd accused is an impulsive youth of about 22, apparently dominated by the strong will and influence of his elderly relation, the 1st accused. That the 1st accused had the intention of killing the deceased if occasion would arise for that contingency even before he started from Punjila house, would be clear from the facts that he had made arrangements for the procuring of the guns previously, and he got those guns brought by the accused 3 and 4 when proceeding to the scene of the occurrence. It cannot be, therefore, said that he committed the offence without any premeditation or under some momentary provocation only. It seems to me that his offence is of the most aggravated type and no mitigating circumstance really exists in his favour. If that is the true position the only proper sentence to be passed on him for the offence under Section 302 will be the extreme penalty under the law. Having regard to the fact that the 2nd accused was not a party directly to the actual shooting and also to the fact that he was probably acting more under the influence of the 1st accused rather than out of any malicious motive of his own to kill the deceased, I should think that the lesser penalty of transportation for life would be adequate punishment for the offence of murder committed by him jointly with the accused 1 and 3.. With regard to the 3rd accused also, having regard to his youth and also to the fact that he would have been quite presumably acting under the dominating influence of his elderly relation, the 1st accused, having apparently no motive of his own to kill the deceased, I should think that transportation for life would be adequate punishment for his offence also under Section 302 read with Section 34 I.P.C. The 1st accused is accordingly convicted and sentenced to be hanged by the neck till he be dead subject to the confirmation by the High Court. He is informed that he may appeal to the High Court within 7 days, if he so desires. The accused 2 and 3 are likewise convicted, but sentenced to transportation for life only for the offence under Section 302 read with Section 34 of the I.P.C. With regard to the offence under Section 201 of the Indian Penal Code, the accused 3 and 6 to 9 appear to have played less important parts than the other accused in this offence. The punishment to be awarded to them should, therefore, be somewhat milder. The accused 1, 2, 4 and 5 are accordingly convicted and sentenced to rigorous imprisonment for a term of three years each for the offence under Section 201 I.P.C. while the accused 3 and 6 to 9 are convicted for the same offence, but sentenced to rigorous imprisonment for a term of two years each only. The sentences shall run concurrently so far as accused 1 to 3 are concerned who have been convicted and sentenced for the graver offence of murder also.

Dictated to the shorthand-writer, transcribed by him, and pronounced in open Court, this, the 11th day of November 1948.

(*Sd.*) C. KRISHNA MOOSE,
Sessions Judge.

N. B. The accused will be confined in the Central Jail at Cannanore.

APPENDIX

The following witnesses were examined:—

FOR PROSECUTION

1. Nemiraja Shetty.
2. Sridhara Shenoy.
3. Vittal Baliga.
4. Bava Beary.
5. Nemiraja Athikari.
6. Laxmi Moolyathi.
7. Sri B. Narayana Rao (Tahsildar).
8. Parava Bogra (Approver).
9. Jinnu.
10. Padthire Padmavathi.
11. Marudevi.
12. Audu.
13. Kalu.
14. Monappa Moolya.
15. Laxmi Moilithi.
16. Kittu Moolya.

17. Kunha Poojary. 18. Chandravathi.
19. Lingappa Pujary. 20. Punjila Padmavathi.
21. Sri K. V. Raghavan (Circle Inspector) 22. P. Poovappa (P.C. 233).
23. Sri K. S. S. Prabhu (Sub-Inspector). 24. Ananda (H.C. 266).
25. T. Seetharama (H.C. 295).
26. Dr. K. C Jacob (Professor of Medical Jurisprudence).
27. Sri B. N. Hegde (Huzur Sheristedar). 28. Mr. L. Cuthbert (Deputy Tahsildar).
29. Sri H. S. Bhat (Magisterial clerk). 30. Mr. B. T. Soans (Photographer).
31. Obaya. 32. Shanthiraja Shetty (patel).
33. Sri B. P. Shiva (Circle Inspector)

FOR DEFENCE—None.

The following exhibits were filed:—

FOR PROSECUTION:

P1	5-12-1940	Registration copy of maintenance karar entered into in the family of P.W 1.
P2	4- 2-1948	Receipt for purchase of rice from the deceased by P.W.2's firm.
P3	17- 6-1948	Portion marked in the deposition of P.W.6 in the lower Court.
P4 and	21- 2-1948 } 23- 2-1948 }	Statement of Parava Bogra (P.W.8) recorded by P.W.7.
P4(a)	23- 2-1948	Certificate of P.W.7 appended to Exhibit P4.
P4(b)	do	Portion marked in Exhibit P4.
P5	17- 6-1948	Deposition of P.W.15 in the lower Court.
P6	10- 2-1948	Complaint laid by P.W.18 at the Belthangady Police Station.
P7	17- 6-1948	Deposition of P.W.19 in the lower court.
P8	14- 2-1948	Statement of P.W.20 under Section 164 Cr.P.C.
P9	18- 6-1948	Deposition of P.W.20 in the lower Court.
P10	10- 2-1948	Report of Gardadi patel (P.W.32) to the Station House Officer, Belthangady.
P10(a)	do	Statement of the 2nd accused recorded by Gardadi Patel.
P11	14- 2-1948	Requisition sent by the Inspector of Police, Moodabidri to the Tahsildar, Karkal.
P12	24- 2-1948	Requisition to P.W.27 to record the statement of the 4th accused under Section 164 Cr.P.C.
P13	25- 2-1948	Statement of the 4th accused under Section 164 Cr.P.C.
P13(a)	do	Certificate of P.W.27 appended to Exhibit P13.
P14	19- 3-1948	Proceedings of the District Magistrate, granting pardon under Section 337 Cr.P.C. to Parava Bogra, P.W.8.
P15	26- 2-1948	Requisition sent by the Circle Inspector of Police, Moodabidri to the Chemical Examiner, Madras for chemical analysis of the M.Os.
P16	do	Do to do by do for do.
P17	do	Do to do by do for do.
P18	5- 3-1948	Office copy of letter to the Chemical Examiner sent by the Magistrate.
P19	12- 4-1948	Report of the Chemical Examiner.
P20	19- 3-1948	Further report of do.
P21	15- 6-1948	Further report of do.
P22	12- 6-1948	Report of the Imperial Serologist.
P23 to P26(a) ...		Photographs of the various places at the scene of offence.
P27	17- 6-1948	Deposition of Tharmbe in the lower Court.
P28	12- 2-1948	Portions marked in the confessional statement of the 2nd accused before the Circle Inspector of Police, P.W.33.
P29	5- 7-1948	Eye-sketch of the scene of offence.
P30	31-10-1948	Detailed sketch of the locality of the scene of offence.
P31to P39	18- 7-1948	Statements of the accused in the lower Court.

FOR DEFENCE:

D1	7- 12-1946	Certified copy of the plaint in O.S. No. 451/46 on the file of the District Munsif's Court, Puttur.
D2	17- 6-1948	Portion marked in the deposition of P.W.6 in the lower Court.
D3	18- 6-1948	Do in do of P.W.8 in do.
D4	17- 6-1948	Do in do of P.W.9 in do.

D5	18- 2-1948	Statement of P.W.10 under Section 164 Cr.P.C.
D6 & D6(a)	16- 6-1948	Portions marked in the deposition of P.W.10 in the lower Court.
D7	15- 2-1948	Statement of P.W.11 under Section 164 Cr.P.C.
D8	17- 6-1948	Portion marked in the deposition of P.W.13 in the lower Court.
D9	16- 6-1948	Do in do of P.W.14 in do.
D9(a)	do	Deposition of P.W.14 in do.
D10 & D10(a)	15-2-1948	Portions marked in the statement of P.W.16 under Section 164 Cr.P.C.
D10(b)	do	Statement of do under do.
D11	16- 6-1948	Deposition of P.W 16 in the lower Court.
D12	15- 2-1948	Statement of P.W.17 under Section 164 Cr.P.C.

MATERIAL OBJECTS:

1. A gun	2. Another gun
3. Torch light	4. A Naga cane
5. Hurricane lantern	6. A cigarette tin
7. A gun powder tin	8. A petromax light
9. & 10. Two baskets	
11. One old bucket	12. Burnt bone pieces
13. Shirt of the 8th accused	

(Sd.) C. KRISHNA MOOSE,
Sessions Judge.

(True Copy)

Shirastedar 11/48
Sessions Judge)
11. 10. 1948

WORDS: 11,378.

S. P. WORKS. LTD.—24-11-'48/35 COPIES.

Cr.A. No. 122/48 and
Criminal Appeal Nos.667/48, 27/49 and 696/48

The accused Nos.4 to 9 were directed to be released on bail by order of the High Court dated 8-12-1948 on Criminal Miscellaneous Petition No.2458 of 1948.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the twenty-first day of February

One thousand nine hundred and forty-nine

PRESENT:-

THE HONOURABLE MR. JUSTICE SUBBA RAO,

and

THE HONOURABLE MR. JUSTICE PANCHAPAKESA AYYAR.

REFERRED TRIAL No. 122 of 1948.

Padmaraja Shetty. Prisoner. (1st Accused)

Trial referred by the Court of Session of the South Kanara Division for confirmation of the sentence of death passed upon the said Prisoner in Case No.30 of the Calendar for 1948 on 11-11-1948.

CRIMINAL APPEALS Nos.667 of 1948, 27 of 1949, and 696 of 1948.

1. Padmaraja Shetty
2. Babu Bunnu alias Srivarma Bunnu. .. Appellants in C.A.No.667/48 (Accused Nos.1 and 3).

Nemiraja alias Anni Semitha.. Appellant in C.A.No.27 of 1949 (2nd Accused).

1. Nemu Poojary
2. Annu Shetty
3. Soma Poojary
4. Kittu Poojary
5. Karia Poojary
6. Muthu Shetty

Appellants in C.A.No.696/1948 (Accused Nos.4 to 9).

Appeals by the Appellants aforesaid against the sentences passed upon each of them in the said S.C.No.30 of 1948.

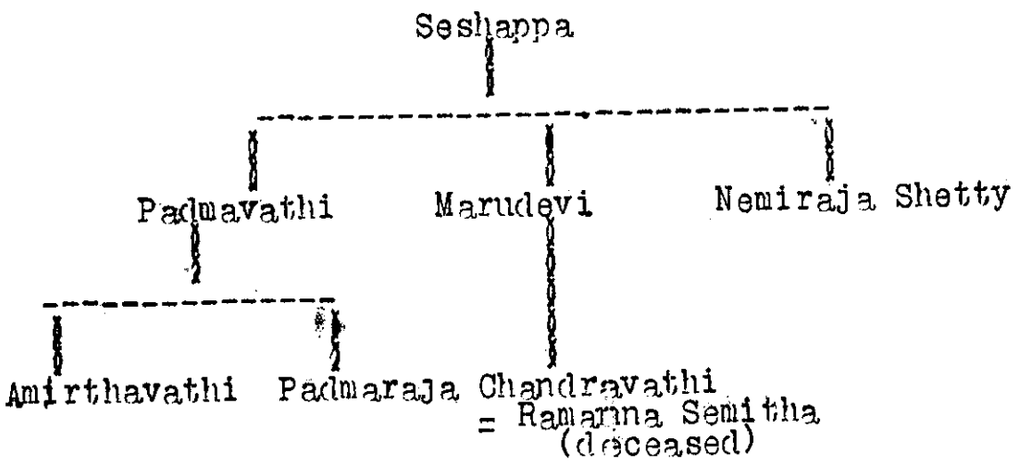
These cases coming on for hearing on Monday the 14th day of February 1949, upon perusing the petitions of Appeal, the record of the evidence and proceedings of the said Court of Session, and upon hearing the arguments of Mr.M.K.Nambiar and Mr. M. Sekhara Menon Advocates for the accused Nos.1 and 3, of Mr. B. Punyakoti Chetty, Advocate appearing amicus curiae for the 2nd accused, and of Mr. M. Santosh, Advocate for the Accused Nos,4 to 9 and of the Public Prosecutor on behalf of the Crown, and the case having stood over for consideration till this day, the Court delivered the following

JUDGMENT:-

JUDGMENT:- (Judgment of Court delivered by the Honourable Mr. Justice SUBBA RAO).

Accused 1 to 9 are the appellants. Accused 1 to 3 were convicted by the Sessions Judge of South Kanara under Section 302 of the Indian Penal Code and under Section 302 read with Section 34 of the Code. The first accused was sentenced to death, and the other two accused to transportation for life. Accused 1, 2, 4 and 5 were convicted under Section 201 of the Code and sentenced to rigorous imprisonment for a term of three years each. Accused 3 and 6 to 9 were convicted of the same offence but sentenced to rigorous imprisonment for a term of two years each.

For a correct appreciation of the facts and the contentions of the parties the following genealogy may usefully be referred to:



The second accused is a brother of Ramanna Semitha. The third accused is the brother-in-law of the first accused. Accused 4 to 9 are connected with the first accused either as tenants of his or of some others under his control and influence.

The first accused belongs to a well-known Aliyasanthana Jain family in Gardadi called Padthire family. The family house is surrounded by forest tracts with a few other houses belonging mostly to the tenants. Naturally, the family wielded great influence in that locality. Nemiraja Shetty was the manager of the Aliyasanthana family till about 1941. In 1940

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he set apart certain property for the maintenance of Chandravathi and her children. In 1941, for one reason or other, Nemiraja Shetty relinquished his management in favour of Padmaraja Shetty, the first accused. After he became the Manager, Padmaraja Shetty refused to abide by the arrangement entered into by Nemiraja Shetty with Chandravathi, with the result that Chandravathi and her husband had to come to the family house of Padthire for their maintenance. Padmaraja Shetty, the first accused, shifted to another house in the neighbourhood. As the first accused was not maintaining Chandravathi and his family properly, Ramanna Semitha in his turn was putting obstacles in the way of the first accused's management of the properties. Ramanna Semitha had also shifted his wife and child to a nearer village in Belthangadi for convenience of medical treatment and also for the education of his boy. As the first accused was not providing Chandravathi with the necessary funds, Ramanna Semitha removed a quantity of rice stocked in the family house and sold the same on 5-2-1948. This enraged the first accused. The first accused along with accused 2 to 8 came to the Padthire house at about 8 P.M. on a Saturday. After the first accused ascertained from his mother the fact that the rice was removed by Ramanna Semitha he directed his companions to take out to the verandah the remaining stock of the rice. In the meantime the deceased came to the front entrance of the inner courtyard of the house but as it was bolted from inside he called out for opening it. After some heated discussion and exchange of abuses, the prosecution case is, the accused came out of the house from the back door. Accused 1 and 3 shot at the deceased. Accused 1 and 2 beat the deceased with sticks, even after he had fallen down with gunshot injuries and later on accused 1 to 9 together cremated the body in a hurry Exhibit P-30, the sketch of the scene of offence filed in the case, clearly gives the situation of the house and the topography. It also indicates the places where the accused

and the deceased abused each other and also the place where the deceased was shot at.

We shall first consider the evidence against the first accused. P.W.8 is the approver. He is a tenant of the first accused and also officiates at the ceremonies of Bhootastana in the Padithere house. He gives in a detailed manner the circumstances under which the deceased met with his end. It is not necessary to refer to all the facts deposed by him except the version given by him as regards what happened in the inner court-yard and also in the outer court-yard. He deposes that all the accused were in the inner court-yard, shown as '2' in Exhibit P-30. The first accused's mother and sister were inside the house. It was then about 8 P.M. Ramanna Semitha arrived at the front door but as it was bolted from inside he called out to open it. The first accused said "You have stayed in our house so long. Due to you there is no rice in the house for food." The deceased retorted saying that the accused had eaten away the income due to his child all these years. This developed into a violent quarrel. The first accused asked them all to come out. He took the gun from the hand of the third accused, and the third accused took the gun from the fourth accused, and they all went out through the door in the back side of the inner court-yard. Then accused 1 and 3 stood in front of the hay-rick. The first accused fired a shot on Ramanna Semitha after flashing a torch light he had with him. The third accused also fired a shot at the deceased immediately, thereafter. Ramanna Semitha dropped down in a crouching posture. Accused 1 to 4 then began to beat him. When he fell down he cried out for his mother-in-law. As she came out they stopped the beating. The deceased rolled himself and found his way to the outer yard. P.W.8 saw him bleeding from the wounds on his person. Accused 1 to 3 said it is to be burnt and later on the dead body was cremated.

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This version of the approver is corroborated on material particulars by other disinterested evidence in the case. P.W.10 is Padmavathi, the mother of the first accused She speaks to the exchange of abuses between her son and the deceased. She heard two gun-shots immediately they were She also heard Ramanna Semitha crying out "Mother-in-law, I am being beaten and killed." She followed her sister Marudevi and found Ramanna Semitha in a sitting posture in the porch. A suggestion was made in the cross-examination that she was deposing against her own son at the instigatio of her daughter who was not on good terms with the accused. She was even reminded by the cross-examining counsel that her son was being charged for murder and if convicted might be sentenced to death. In spite of the warning she stated "I am telling the truth, what happened to my knowledge, I am not ever deposing against any one. I cannot tell a lie." The learned Sessions Judge rightly relied upon this evidence. The first accused is her only son. With the knowledge of the consequences if this accused was convicted she deposed to all the facts within her knowledge in an honest and straightforward manner; and it is impossible to believe that this old woman of 70 years would have spoken to facts, false to her knowledge, just to please her daughter On the other hand, her motherly love should have prompted her to exculpate her son as far as possible. We do not see any reason to reject her evidence. If accepted, it corroborates the evidence of the approver on four material particulars:

(1) The accused and the deceased abused each other;

(2) Immediately the accused went out she heard two shots in succession

(3) The deceased crying out to his mother-in-law

(4) She saw Ramanna Semitha in a sitting posture in the porch wriggling himself and slipping down the steps into the yard.

P.W.11

P.W.11 is Marudevi, the mother-in-law of the deceased. She also saw the accused in the house on that night and also the third and fourth accused, each having a gun in their hands. She also stated that the first accused took the gun from the third accused before he left with the others. The third accused, after handing over the gun that he had originally with him, took from the fourth accused the gun that he had with him; and the first accused had a light similar to M.O.3 in one hand. She heard two gun-shots in succession and the cry of Ramanna Semitha "I am beaten and killed, mother-in-law." She went out with a lantern and saw Ramanna Semitha in a sitting posture and his being beater by accused 1 and 2 with cane sticks. She saw his head broken and blood all over his person and the intestines coming out. He slipped and fell rolling down the steps into the yard. A short while after that Ramanna got up and walked staggering to the wicket gate leading to the field but at the wicket gate he again fell and rolled down into the drain below. It is said that this witness is an interested witness. It is true that she is the mother-in-law of the deceased; but she is also the maternal aunt of the first accused. There is no particular reason alleged or proved for her giving evidence, foisting a false case on the accused She also corroborates the approver on the following material particulars:

(1) The exchange of hot words between the accused and the deceased;

(2) Accused 1 and 2 going out with guns in their hands;

(3) the hearing of gun-shots in succession;

(4) She heard the cry of Ramanna Semitha, "I am beater. and killed, mother-in-law"

(5) The first accused having a light similar to M.O.3 in his hand;

(6) Accused 1 and 2 beating the deceased with cane sticks;

(7) Her seeing his head broken and blood all over his person.

The evidence does not stop there. Exhibit P-13 is the confessional statement made by the fourth accused Nemu Poojari. He also speaks to the mutual abuses, the shooting by accused 1 and 3, the deceased falling down, and the first and second accused beating him with sticks. He also spoke to the two women coming out. The learned counsel pointed out a discrepancy in the statement. The relevant passage on which the learned counsel relied upon may be extracted;

"Upon hearing that, Padmaraja, Anni Semitha, Babu Bunnu and I went to the outer yard through the back door. There Bunnu took up one gun from the hay-rick and gave it to Padmaraja. I took up the other gun and gave it to Babu Bunnu."

According to the evidence of the approver and P.W.11, the guns were taken by accused 1 and 3 from the inner yard itself: whereas this statement reads as if the third accused took the guns from out of the hay-rick after they went out to the outer yard. No doubt, there is a discrepancy. It is in evidence that the guns were placed in the hay-rick. The statement also clearly implicates accused 1 and 3 as the persons who fired the guns. The fourth accused might have made a mistake in regard to the point of time when the guns were taken from the hay-rick. Further, there is evidence in this case of P.Ws.5 and 17, before whom the first accused admitted that he had shot and killed the deceased. P.W.5 is related to the first accused the first accused's wife being his niece. He had to pay a sum of Rs.850 to his niece and therefore went to Ponjila that day. He slept in a chavadi that night. At midnight he saw Padmavathi and the other woman awake, and the first accused also was there. The 1st accused told him that there was a big quarrel between

Ramanna Semitha

Ramanna Semitha and himself and that he shot him and the latter died. He told him that incident as he preseed for a receipt for the money paid by him to the accused's wife and he told him that he was in troubled mind on account of the said incident. It was suggested to him in the cross-examination that he was giving this false evidence to escape the liability to pay the debt. The suggestion is far-fetched and cannot be a sufficient reason for P.W.5 foisting a case of murder on the accused. He gave the evidence in a straightforward manner and there is no reason to reject it. P.W.17 is alleged to cure people for snake bites. The first accused sent for him on the morning of the next day and told him that he should say that the accused had been bitten by a snake. The learned Sessions Judge accepted his evidence and we also see no reason to disbelieve this evidence.

We are satisfied that the evidence of the approver is corroborated in material particulars implicating the accused.

At this stage it will be convenient to consider the argument advanced by the learned counsel in regard to the law of corroboration. The law on this point in India is practically the same as that in England. It is so well settled that it will be unnecessary to consider the various decisions cited before us. It is enough to extract the important principles laid down in the leading case, Rex -V-Baskerville(1):

(1) the uncorroborated evidence of an accomplice is admissible in law;

(2) It has long been the practice at common law for a Judge to warn the Jury of the danger of convicting a person on the uncorroborated testimony of an accomplice or accomplices, but the Judge should point out to the Jury that it is within their legal province to convict upon such unconfirmed evidence;

(3) the rule of practice has become virtually equivalent to a rule of law

(4) the confirmation does not mean that there should be

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(1) 1916 (2) K.B. page 658.

independent evidence of that which the accomplice relates, or his testimony would be unnecessary; for, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case;

(5) corroboration must be by some evidence other than that of an accomplice, and, therefore, one accomplice's evidence is not corroboration of the testimony of another accomplice;

(6) corroboration must be independent testimony which implicates him, that is which confirms in some material particular not only the evidence of the crime having been committed but also of the prisoner committing it;

(7) corroboration can be of real circumstantial evidence of his connection with the crime.

In India the same principles have been embodied in the statutory form. Section 133 of the Indian Evidence Act reads as follows:

> "An accomplice shall be a competent witness against an accused person: and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

Illustration (b) of Section 114 of the Evidence Act reads as follows:-

> "An accomplice is unworthy of credit, unless he is corroborated in material particulars."

Section 30 of the Evidence Act also may be noticed. It states:

> "When more persons than one are being tried jointly for the same offence, and a confession made by one such person affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession."

In Muthukumaraswami Pillai -V- King Emperor (2) a Bench of five Judges of this Court had to construe the Sections and the learned Judges held by a majority that the evidence of an accomplice need not be corroborated in material particulars before it can be acted upon and that it is open to the Court to convict upon the uncorroborated testimony of an accomplice if the Court is satisfied that the evidence is true. Benson J expressed his opinion in the following terms:

> "In my opinion there is nothing in the illustration (b) to Section 114 which overrides, or renders nugatory, the plain and explicit declaration contained in Section 133,or which requires us to hold that the evidence of an accomplice must always, and in all circumstances, be regarded as unworthy of credit unless it is corroborated in material particulars, or which requires us to hold that it is not open to the Court to act on such evidence, even when the Court believes it to be perfectly true."

In dealing with Section 114, Wallis J. observed that the said section laid down only presumptions and the Court is not compelled to raise them but is to consider whether in all the circumstances of the particular case they should be raised. The dissenting view was expressed by Abdur Rahim J. The learned Judge thought that it was well established law that, except in circumstances of any special nature, it was the duty of the Court to raise the presumption that accomplices' evidence is unworthy of credit as against the accused persons unless it was corroborated in material particulars. This judgment expressed the well known principle of the English Law that an accomplice s evidence is legal evidence, but it does not lay emphasis on the rule of practice which the later decisions noted. In Venkataramanna -v- Emperor (3) Sundaram Chetty and Pakenham Walsh, JJ. held that the evidence of an

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(2) I.L.R. 35 Mad, page 397. (F.B.)
(3) 1933 M. W. N, (Cal,) page 173.

accomplice must as a rule be considered untrustworthy and should be corroborated in material particulars by independent and untainted evidence. They relied upon the following passage from the judgment in Rex -v- Mohesh Biswas .....(4)

> "The corroboration which is needed in order to make Soorat Ali's testimony against the prisoners trustworthy should be corroboration derived from evidence which is independent of accomplices which is not vitiated by the accomplice character of the witness and further should be such as to support that portion of the accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed and participated in the acts of commission."

The Madras High Court again considered the law on the subject in the well known Tyagaraja Baghavathar's case (5). Though this judgment was reversed by the Judicial Committee on the scope of Section 411-A of the Code of Criminal Procedure, the observations of the learned Judges in regard to the scope of corroborative evidence are left untouched. At page 396, the learned Judges state the law as follows:

> "Section 133 of the Indian Evidence Act states that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Under the English common law the same rule applies, but both in England and in India, it has become a rule of practice, and, to use the language of the Privy Council in Mahadeo -v- The King (6), it is now virtually a rule of law, that corroboration is required. It is also an accepted rule that one accomplice cannot corroborate another; but section 30 of the Indian Evidence Act says that

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(4) 19 Suth. W.R.(Crl.) page 16.
(5) I.L.R. 1946 Mad. page 389.
(6) 44 L. W. page 253 (P.C.)

"when more persons than one are being tried jointly for the same offence, and a confession made by one affecting himself and some of the others is proved, the Court may "take into consideration" the confession as against the others as well as against the person who makes the confession. There is no corresponding provision in English law. In the recent case of Rajagopal, In re (7), a Full Bench of this Court had to consider the effect of this section and it accepted as correct the interpretation to be found in Woodroffe and Ameer Ali's Law of Evidence, Ninth Edition, at page 312.'

It is clear from this passage that the law in India is the same as in England except to the extent that it is modified by Section 30 of the Indian Evidence Act. The Full Bench case reported in Rajagopal, In re, (7) does not lay down any novel proposition but only endorses the principles of law that have been accepted and followed in this Court. The learned Judges state that though legally the approver's evidence is admissible under the Evidence Act and if accepted is sufficient to support a conviction, it should not be accepted unless the case is a very exceptional one. On the other point the learned Judges held that the confession of a co-accused can be accepted as corroboration of the approver's evidence. This conclusion was arrived at on a consideration of Section 30 of the Indian Evidence Act and the passage summarized in Woodroffe and Ameer Ali's Law of Evidence, 9th Edition page 312. We do not think that the learned Judges meant to lay down that the confessional statement has a higher sanctity than the evidence of an accomplice. They should be understood to have only meant that in view of the statutory provision a court can legally use the confession to corroborate the approver's evidence; and in that particular case they have used and relied upon that confession to corroborate the approver's evidence on material particulars. It does not

(7) I.L.R.1944 Mad. 308 (F.B.)

follow from that judgment that as a point of law, a confession of a co-accused must be accepted as corroborative evidence of the approver's evidence. It does not affect the rule of practice that the Courts should be loath to accept tainted evidence as corroboration of an approver's evidence. The confession of a co-accused cannot in our view afford better or more reliable evidence than that of an accomplice. If an accomplice's evidence is tainted evidence, the confession of a co-accused also is tainted evidence. Section 30 of the Indian Evidence Act does not compel a Court to accept the confession of a co-accused as corroboration of the approver's evidence. It only empowers the Court to take into consideration such confession as against the person jointly tried with him or against the person who makes such a confession. Though an accomplice's evidence is legal evidence and is not excluded by any of the provisions of the Evidence Act it has been held that as a rule of practice such evidence should not be accepted as corroborative evidence. The same principle should apply even in the case of a confessional statement. The value of a co-accused's confession as corroborative evidence has been considered by the Lahore High Court in the decision reported in Sharif -v- Emperor (8). The learned Judges observed:

> "In the first place it has been held time after time that the evidence of one approver cannot be corroborated by that of another approver. There must be independent corroboration, and in the second place the confession of a co-accused, while it must be taken into consideration, is invariably considered to carry little weight and itself to require corroboration. It has occasionally been said of such evidence that it is weaker than the evidence of an approver. That being so, the evidence of an approver,

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(8) A.I.R. 1944 Lahore page 472.

"corroborated by a confession of a co-accused, must be considered to be inferior to the evidence of one approver corroborated by the evidence of another

We respectfully agree with these observations. If this principle is accepted Section 30 of the Evidence Act does not become nugatory. There will be very many circumstances when the co-accused's confession could be and should be taken into consideration by a Court in finding out the guilt of the accused. In Emperor -v- Laxman Jairam (9) some of such circumstances have been narrated. The relevant passage may usefully be extracted:

"But in my view the confession is not strictly evidence against a co-accused, and I am clearly of opinic that a conviction based solely on the confessior of a co-accused would be bad in law. There are many accasions on which the Court is undoubtedly assisted by taking into consideration the confession of a co-accused. There may be the direct evidence of a single witness which the Court would be more ready to accept if supported by the confession of a co-accused. Or, in a case depending on circumstantial evidence, where the question to be decided is what is the proper inference to be drawn from all the circumstances proved, the confession of the co-accused is one of the circumstances which may help the court in drawing a correct inference."

The learned counsel for the accused contended that there was no corroborative evidence in this case implicating the first accused in the commission of the crime. He laid emphasis upon the fact that no independent witness deposed to the fact that the first accused shot at the deceased. He relied upon the possibility of some other accused taking the gun from the hand of the first accused and shooting at the deceased. If the argument of the learned advocate is to be accepted it would

(9) 38 Bom. L.R. page 1122.

would make the evidence of an approver *unnecessary. The approve* evidence can be corroborated not only by *direct* evidence but also by circumstantial evidence. In this case if the evidence of P.W.10 and P.W 11 is believed we can r reasonably infer that the first accused shot at the deceased. Further, there is the evidence of P.W.5 who deposed that the first accused admitted before him that he shot the deceased and he later died. Even Baskerville's case (1) relied on by the learned counsel does not support him. In that case the evidence relied upon for corroboration is only circumstantial evidence, and, even if accepted, it was not such as to exclude all the possibilities of the accused being innocent of the offence with which he was charged. If the evidence in this case is believed, it proves that the accused shot at the deceased and beat him with sticks, along with the second accused. The deceased was seen with wounds on the head and the stomach by P.W.11. P.W.11 says his head was broken and there was blood all over his person. His intestines had come out.

As a result of the wounds he died and he was urgently cremated On these facts, we have no hesitation in holding that the first accused is guilty of murder

So far as the 3rd accused is concerned, in our view he cannot be convicted for murder unless there was a common intention between the first and second accused to commit murder. The Judicial Committee gave an authoritative decision on the interpretation of Section 34 of the Indian Penal Code in the decision reported in Mahbub Shah -v- Emperor (10) It is not necessary to consider that decision at length except to extract the principle which is found at page 120:

> "It is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the prearranged plan. As has been often observed,

(1) 1916 (2) K.B. page 658 (10) A.I.R.1945 (P.C.)page 118.

"it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case."

Later on, after pointing out the distinction between common intention and same intention, the Judicial Committee gave the important caution that the inference of common intention within the meaning of the term in Section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case." No doubt, this judgment was interpreted by Chandrasekhara Ayyar and Kuppuswami Ayyar JJ. in the decision reported in In re. Nachimuthu Goundan (11), as not to rule out the possibility of a common intention developing in the course of the events, though it might not have been present to start with. In this case the evidence points out that there was no intention to commit murder at all, till the first accused was enraged after the exchange of abusive words between him and the deceased. The evidence only discloses that the intention was to remove the grain still remaining in Padthire house. Indeed, the witnesses speak to the fact that the first accused asked accused 2 to 5 to take out to the verandah the remaining stock of rice, presumably for removing it to the Punjila house. It is no doubt true that the accused secured two guns, and it is obvious on the evidence that they were secured more as a precaution against any possible emergencies than to use them against any particular person. After the exchange of hot words between the accused and the deceased, the first accused took the gun from the third accused, went out and shot at the deceased. According to the evidence, the third accused took the gun from the hand of the fourth accused and followed him and shot at the deceased. Both the accused had certainly the same intention to kill the deceased. But, can it be said on the facts that they had a common intention to do so? For aught we know, the

(11) A.I.R. 1947 Mad. page 259.

first accused did not even know that the third accused was following him with a gun in his hand. It is not suggested that the third accused handed over the gun to the first accused and persuaded him to shoot the deceased. The first accused of his own accord took away the gun from the hands of the third accused As there was no pre-arranged plan and the circumstances disclose that the first accused rushed to the hay-rick to shoot at the deceased taking the gun from the hands of accused 3 on the spur of the moment and he had not even the knowledge of the third accused having a gun, it is impossible to hold that there was any common intention between the two accused, to commit murder, On the evidence, it is not even possible to convict the third accused for murder as it is not proved that the bullet from his gun hit the deceased. He did not take part in the subsequent beating of the deceased. On the aforesaid facts, we are of the opinion that the accused is guilty only of an attempt to commit murder.

So far as the second accused is concerned, if there was no common intention to commit murder, the only remaining evidence against him is that he beat the deceased with a cane stick. He is a brother of the deceased. P.W.8 says that he gave along with the other accused, three or four blows with a stick. P.W.11 said that the second accused beat the deceased with a cane stick. On the evidence it is impossible to say that this accused had the intention to kill his brother. It cannot even be said that he had knowledge that the deceased had received a gun shot wound at the time when he used the gun. P.W.11 said that the deceased's head was broken. In th circumstances, in our view, this accused can be convicted onl under Section 325 of the Indian Penal Code for having caused grievous hurt to the deceased.

There remains the charge under Section 201 I.P.C. against all the accused for causing the evidence of the commission of the offence to disappear. P.W.8, the approver describes the part taken by accused 1 to 8. The fourth accused

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in his confessional statement implicates all these accused as having taken part in disposing of the dead body. P.Ws.12, 13, 14 and 16 corroborate the evidence of the approver. P.Ws.12 and 13 took part in preparing the firewood to burn the body. P.W.14 prepared the pyre to cremate the deceased. P.W.16 carried the body to the pyre. All these witnesses are admittedly accomplices who, if their evidence is true, are also liable to be convicted under Section 201 along with the other accused. The question, therefore, is whether this tainted evidence can be accepted to corroborate the evidence of the approver. The principle that the tainted evidence of an accomplice should not be accepted as corroborative evidence of the approver has been accepted and followed in innumerable cases. One of such decisions is that of the Judicial Committee reported in Mahadeo -v- The King (12). At page 891 their Lordships observe:

> "It is well settled that the evidence of an accessory, which Sukraj plainly was on his own showing, must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it, and further that evidence of one accomplice is not available as corroboration of another: The King -v- Baskerville,(1). This rule as to corroboration, as was pointed out in the case just cited, long a rule of practice, is now virtually a rule of law,.....".

Following this principle we are not prepared to accept the evidence of the accomplices as corroboration of the approver's evidence. In the circumstances of the case, we are also not prepared to accept the confessional statement of the fourth accused as corroborating the approver's evidence. There is no other evidence against accused 2, 3 and 5 to 9.

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(12) 1936 M.W.N. page 889.(P.C.)
(1) (1946) 2 K. B. page 658.

We therefore hold that the charge under Section 201 I.P.C. is not made out against accused 2, 3 and 5 to 9. We set aside the conviction of the said accused under Section 201 I.P.C. The same cannot be said of accused 1 and 4. There is enough circumstantial evidence in the case to bring home the guilt to accused 1. In regard to accused 4, his confessional statement Exhibit P-13 can certainly be relied upon to corroborate the approver's evidence. We therefore convict accused 1 and 4 under Section 201 I.P.C.

As regards the sentences, the facts already narrated disclose that there was no premeditation to commit murder. The deceased was shot by the first accused on the spur of the moment in view of the acrimonious exchange of words that passed between them. All the accused gathered for the purpose of removing away the grain and, unfortunately and unexpectedly, this incident took place. We, therefore, consider that the ends of justice would be met if the first accused is awarded the lesser penalty of law. The death sentence imposed on him is set aside and instead he is sentenced to transportation for life. We also sentence him under Section 201 I.P.C. to three years rigorous imprisonment, but the two sentences shall run concurrently.

The second accused was sentenced by the Sessions Judge to transportation for life. We set aside the conviction for murder and convict him under Section 325, Indian Penal Code, and sentence him to five years rigorous imprisonment.

We convict the third accused under Section 307, Indian Penal Code, and sentence him to seven years rigorous imprisonment. We sentence accused 4 to two years rigorous imprisonment. The conviction and sentences on the accused 2, 3 and 5 to 9 under Section 201 I.P.C. are set aside. Accused 5 to 9 are acquitted.

(Signed) R. Jayaram Ayyar,
Deputy Registrar, Appellate Side.

(True copy) Ramamurthy 4-3-49

Sub-Assistant Registrar, Appellate Side.

To

To

1. The Sessions Judge, South Kanara Division (in duplicate for communication to the Accused Nos.1 to 3)(with records).
2. The Sub Magistrate, Mangalore.
3. No.2 through the District Magistrate, South Kanara.
4. The District Magistrate, South Kanara.
5. The Inspector-General of Police, Madras.
6. The Public Prosecutor, Madras.
7. The Superintendent, Central Jail, Cannanore with reference to his letters No.R.10572/48 Dated 20-11-48 re: Convict No.10572; No.R.10729/48 dated 2-2-48 re:Convict No.10729; and R.No.10728/48 dated 5-1-49 re: Convict No.10728.
8. Copy to Mr.M.K.Nambiar, advocate for Accused Nos.1 & 3.

PRL

Dated 21st February 1949. -20-

J U D G M E N T.

Referred Trial No.122 of 1948.

(Criminal Appeals Nos.667/48,

27/49 and 696 of 1948).

Reducing the sentence of death passed on the 1st accused to one of Transportation for life, and modifying the sentences passed on Accused Nos.2,3 and 4 in the South Kanara Division S.C.No.30/48 and setting aside the conviction of and sentences passed upon Nos.5 to 9 therein, and acquitting them.

C.F. 32 (a)— 23,76,506—20-1-54.

Madras Jail Department

From (Name) Sri.Douglas P.Alberts, M.A.(Hons.),
Designation Superintendent.
Station Central Jail,Cannanore.

Received ____ Registered ____

To

The The Deputy Secretary to Government
Home Department,
Madras.

ASSISTANT SECRETARY TO GOVERNMENT 19 NOV 1954 HOME DEPARTMENT

Enclosures: No. R. / 8631 /54, dated 17- 11- 1954

Sir,

Sub:- Prisoners - Release on medical grounds - Rule 514 of the Madras Prison and Reformatory Manual Volume I Central Jail, Cannanore - Convict No.9804, Padmaraja Shetty - Sanctioned - Acknowledged.

149616/19.XI.

Ref:- G.O.Ms.No. 3346 Home Department Dated 13th November 1954.

The receipt of the above mentioned Government order is hereby acknowledged.

Superintendent.

Copy submitted to the Inspector-General of Prisons, Madras.
mvr.17-11.

May be filed with the G.O.

23/11/54